



AFP

AUSTRALIAN FEDERAL POLICE

REVIEW OF POLICE PURSUITS CONDUCTED BY ACT POLICING IN THE AUSTRALIAN CAPITAL TERRITORY

A REPORT TO THE CHIEF POLICE OFFICER FOR THE ACT



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TERMS OF REFERENCE

REVIEW OF POLICE PURSUITS CONDUCTED IN THE AUSTRALIAN CAPITAL TERRITORY BY ACT POLICING

Introduction

1. The Chief Police Officer for the ACT (CPO) has directed that a review be conducted into the governance, procedures and framework of police pursuits in the Australian Capital Territory (ACT).
2. The review will include, but is not limited to, analysis of recent pursuits in the ACT to fully explore that AFP procedures provide appropriate protection to police and to the community.
3. The Terms of Reference outline the overall aim and responsibilities of the Working Group including key considerations, meeting times and reporting arrangements.
4. The Working Group will produce a final report for the CPO no later than 6 May 2014.

Aim of the Working Group

5. The aim of the Working Group is to provide advice and recommendations to the CPO about the AFP's police pursuit governance, procedures and frameworks.

Priority Tasking

6. The Review will evaluate current operational practices regarding pursuits by reviewing recent pursuits conducted in the ACT and focusing on case studies. The examination of these pursuits will be twofold:

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- a. consider each pursuit taking into account all elements and risk factors including, but not limited to: the reason and/or initial offence which caused the police pursuit to be commenced; location, duration, speed, weather, traffic (vehicle and pedestrian), time of day, road conditions, skills and experience of ACTP members in the pursuit; skills and experience of the Operations Sergeant who has the authority to terminate a pursuit; and
 - b. consider the governance in the way in which the pursuits were documented on PROMIS, examined, reviewed and any recommendations implemented.
7. Review the current pursuit policy to determine its adequacy and compliance by Police members.
 8. Review Workplace, Health and Safety legislation, policy and practices to determine safety compliance relative to pursuits.
 9. Compare other State and Territory Police pursuit policies to identify best practice and possible risk mitigation strategies in relation to pursuits.

The main body of this work can be undertaken by a sub-committee and delivered in a restricted deadline through The Working Group as determined by the Deputy Chief Police Officer – Response (DCPO-R).

Key considerations

10. The Working Group will need to clearly identify:
 - the appropriateness and currency of the existing National and ACTP governance frameworks relating to police pursuits, and any recommended amendments;
 - the appropriateness of aligning ACTP practices and procedures with State/Territory practices and procedures;
 - levels of compliance with ACTP best practice relating to pursuits;
 - the adequacy of current legislation to sanction offenders who fail to stop when directed by police; and
 - any trends in relation to pursuits that result in police members or the public being placed in unnecessary danger.
11. The Working Group will consider the workings of the Police Review Committee including membership, Terms of Reference, outcomes and recommendations.

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12. A focus of the Working Group will be to consider Coronial recommendations relating to police pursuits which have resulted in death or serious injury. This includes recommendations from Coroners interstate.
13. The Working Group may consider views and recommendations from community groups or individuals affected by road trauma.
14. The Working Group may consult with key Government stakeholders, for example the Justice and Community Safety Directorate and the Director of Public Prosecutions.
15. The Working Group will be informed by the AFP's risk management framework.

Working Group responsibilities

16. The Working Group is responsible for managing its own work schedule. This includes the scheduling of meetings, the provision of progress reports and the circulation of draft material for review.
17. The Working Group will report regularly to DCPO-R.

Working Group Sponsor

18. The Working Group will be sponsored by the CPO.

Working Group membership

19. The Working Group will consist of members appointed by the DCPO-R but not including members of the Pursuit Review Committee.
20. Where possible there should be no delegation of Working Group membership. Working Group members are expected to attend all scheduled meetings.

Dispute resolution


21. Any issues or disputes which cannot be resolved by the Working Group are to be progressed to DCPO-R for resolution.

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Work schedule

22. The Working Group will determine the meeting schedule in order to meet the DCPO-R directed deadlines.
23. The Working Group will provide a progress report to DCPO-R after each meeting.
24. Actionable items and deadlines will be set at each meeting and it is the Working Group's responsible to ensure these deadlines are met.



Assistant Commissioner Rudi Lammers
CPO ACT Policing

17 / 4 / 2014



Commander Charmaine Quade
DCPO - R ACT Policing

23 / 4 / 2014

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ACRONYMS

ACT	Australian Capital Territory
ACT DPP	ACT Director of Public Prosecutions
AFP	Australian Federal Police
AFP Guideline	AFP National Guideline: ACT Policing: Urgent duty driving and pursuits
ANZPAA	Australia New Zealand Policing Advisory Agency
CPOACT	Chief Police Officer for the ACT
DCPO-Response	Deputy Chief Police Officer - Response
JaCS	ACT Justice and Community Safety Directorate
PROMIS	Police Real Time Online Management Information System
RT	Road Transport (Act and Regulation)
RTL	ACT Road Transport Legislation
SPOKES	SharePoint Organisational Knowledge Exchange System
UDD	Urgent Duty Driving

EXECUTIVE SUMMARY

Background

1. On 17 April 2014 the Chief Police Officer for the ACT (CPOACT) established a Working Group and endorsed the Terms of Reference for a review of police pursuits conducted in the ACT by ACT Policing.
2. The Working Group was directed to provide advice and recommendations on the AFP's police pursuit governance, procedures and framework. In particular, an emphasis was to be placed on analysing recent pursuits in the ACT to fully explore whether AFP procedures provided appropriate protection to the community and police.
3. The Working Group was directed to provide an analysis of the adequacy of legislation surrounding pursuits, and if deemed deficient, to provide recommendation for legislative reform.

Review Objective and Scope

4. The objective of the review was to evaluate the appropriateness of the governance, procedures and legislative framework of police pursuits.
5. In line with the Terms of Reference, the criteria established for review included:
 - a. Current operational practices regarding police pursuits, with a focus on case studies
 - b. Adequacy of current pursuit policy
 - c. Compliance with workplace health and safety legislation, policy and practices
 - d. Jurisdictional comparison to identify best practice
 - e. Analysis of the sufficiency of legislation
6. The scope included an assessment of:
 - a. Existing AFP governance framework
 - b. State and Territory legislative framework, best practice and procedure
 - c. Terms of Reference of the ACT Policing Police Pursuit Review Committee
 - d. Coronial recommendations in recent pursuits
7. The scope included consultation with:
 - a. Community groups or individuals affected by road trauma
 - b. Key ACT Government stakeholders

Key Findings

8. The current AFP governance framework surrounding pursuits provides the best protection for the community against the expectation that police will ensure the safety of all road users. The pursuit governance framework has withstood significant scrutiny, however should be continually reviewed to ensure compliance with best practice.

9. The ACT Government has demonstrated confidence in ACT Policing's pursuit governance, policy and procedures.
10. The existing pursuit reporting regime needs to be amended to capture additional data to support the work of the Police Pursuits Review Committee.
11. The Police Pursuit Review Committee is a key governance mechanism that must be retained and requires periodic review of its Terms of Reference.
12. Present legislation does not contain adequate penalties and deterrents for drivers who flee from police and does not sufficiently enable police to take strong action against drivers who engage in dangerous behaviour when fleeing from police.

Overall Conclusion

13. ACT Policing has in place an adequate governance framework for conducting police pursuits within the ACT.
14. Notwithstanding this, this review should inform a continued best practice approach to police pursuit policy for ACT Policing.
15. The legislation in the ACT is deficient and does not deter individuals from initiating pursuits.

Recommendations

16. The review has made 42 recommendations to the CPOACT which encompass amendments to AFP policy and procedure and reform to current ACT legislation.
17. Endorsement of all 42 recommendations will provide a contemporary evidence based legislation and governance framework which will achieve best practice and meet the needs of ACT Policing and the expectations of the ACT community.
18. The benefits to be realised from this review and subsequent endorsement of recommendations include:
 - Risk: Reduce prevalence of fleeing drivers;
 - Options: provide alternatives for police to not engage in pursuits;
 - Legislation: adequate penalties and deterrence;
 - Accountability: fleeing drivers will be identified;
 - Deterrence: to deter drivers who may want to flee from police;
 - Consequences: harsher penalties for the offence;
 - Community safety: minimise risk to community; and
 - Police officer safety: mitigate risks to officer safety.
19. The recommendations for legislative reform will impose significant penalties for drivers who flee from police, and have maximum impact to deter drivers fleeing from police.

20. The recommendations seek to implement strict and/or absolute liabilities for the identified vehicle, as is currently the case for traffic camera offences, by applying the same principles to the registered operator of a fleeing vehicle.
21. The recommendations seek to impose penalties on fleeing drivers similar in nature to the *Road Transport (Alcohol and Drugs) Act 1977* offence for Level 4 Prescribed Concentration of Alcohol (PCA). The level of risk posed to the community for a driver fleeing from police is comparable to a high-range PCA offence.
22. This review strongly recommends the following penalties for a first offender be imposed on the driver of the fleeing vehicle, or the registered operator of the fleeing vehicle who has refused or failed to identify the driver:
- 15 penalty units equivalent to a \$2100 fine;
 - Immediate Suspension Notice of three months with a court imposed minimum disqualification of six months and a default disqualification of three years;
 - Court imposed maximum nine months imprisonment; and
 - Seizure, for a period of three months, of the vehicle that was engaged in the pursuit.
23. This review strongly recommends the following penalties be imposed for a repeat offender on the driver of the fleeing vehicle, or the registered operator of the fleeing vehicle who has refused or failed to identify the driver:
- 20 penalty units equivalent to a \$2800 fine;
 - Immediate Suspension Notice of six months with a court imposed minimum disqualification of 12 months and a default disqualification of five years;
 - Court imposed maximum 12 months imprisonment; and
 - Seizure and subsequent forfeiture of the vehicle that was engaged in the pursuit.
24. It is incumbent on ACT Policing to work in partnership with ACT Government and key stakeholders to progress the recommended legislative reforms as a complete package so as to provide alternative options to police pursuits.

RECOMMENDATIONS

The review makes the following recommendations:

Recommendation 1:

The Police Pursuit Review Committee maintains ongoing analysis and review of police pursuit statistics as part of its Terms of Reference.

Recommendation 2:

The Pursuit Driver Debrief Report be amended to ensure that all members capture (where practicable) the reason given by an offender for fleeing from police.

Recommendation 3:

A trial of modified safety parameters regarding [REDACTED] is to be assessed with a view to incorporation into the *AFP National Guideline: ACT Policing: Urgent Duty Driving and Pursuits*.

Recommendation 4:

The existing *AFP National Guideline: ACT Policing: Urgent Duty Driving and Pursuits* remains an appropriate governance document that ensures the best protection for the driver fleeing from police, the police pursuing the fleeing driver, and the community, however the guideline should be periodically reviewed to ensure it remains best practice and is properly informed by the data and experiences of other jurisdictions. These periodic reviews should be overseen by the Police Pursuit Review Committee and ACT Policing Business Committee.

Recommendation 5:

A national AFP approach should be taken towards the development of a governance framework.

Recommendation 6:

ACT Policing should retain control of the *AFP National Guideline: ACT Policing: Urgent Duty Driving and Pursuits*, and ownership of the governance should remain with the Chief Police Officer for the ACT.

Recommendation 7:

The ACT Policing Executive should ensure the Police Pursuit Review Committee continues to meet its obligations under the *AFP National Guideline: ACT Policing: Urgent Duty Driving and Pursuits* and Terms of Reference to safeguard that reporting and accountability mechanisms continue to be met.

Recommendation 8:

The Police Pursuit Review Committee should continue to be chaired by a representative from the area holding ownership of the AFP National Guideline, namely the Deputy Chief Police Officer-Response.

Recommendation 9:

The Police Pursuit Review Committee should meet fortnightly and more often as necessary.

Recommendation 10:

The Police Pursuit Review Committee is to maintain ongoing analysis and review of pursuit statistics to identify trends and report via the Police Pursuit Review Committee Quarterly Reporting regime.

Recommendation 11:

In line with the key findings, the Terms of Reference for the Police Pursuit Review Committee should be amended. Terms of Reference for the Police Pursuit Review Committee have been drafted for approval.

Recommendation 12:

A formal risk assessment of police pursuits in the ACT is to be conducted by the Police Pursuit Review Committee as part of the proposed review of the AFP governance framework.

Recommendation 13:

To reduce the number of pursuits, mitigate the associated risks and hold fleeing drivers responsible and accountable, legislative reform is recommended at 13-1 to 13-23 inclusive.

Refer to Part 7 of this paper for proposed reforms.

Recommendation 13-1:***s.109 RT (Safety & Traffic Management) Regulation 2000
Additional powers of police***

Amend the provision to transfer the penalty provision arising from s.7A(1)(a)(i) RT (Safety & Traffic Management) Act 1999 at s.7(1)(a) RT (Safety & Traffic Management) Act 1999 to this offence condition outright so as not to rely on dangerous driving to occur in order to invoke the elevated penalty regime.

Recommendation 13-2:

s.109 RT (Safety & Traffic Management) Regulation 2000

Additional powers of police

Amend the provision to incorporate the *repeat offender regime* per s.7A(1)(b) RT (Safety & Traffic Management Act 1999.

Recommendation 13-3:

s.109 RT (Safety & Traffic Management) Regulation 2000

Additional powers of police

Amend the provision to apply the *automatic licence disqualification regime* per s.63 RT (General) Act 1999.

Recommendation 13-4:

s.109 RT (Safety & Traffic Management) Regulation 2000

Additional powers of police

Amend the provision to apply the *immediate (licence) suspension regime* per s.61A RT (General) Act 1999.

Recommendation 13-5:

s.109 RT (Safety & Traffic Management) Regulation 2000

Additional powers of police

Amend the provision to apply the vehicle seizure and forfeiture regime by including the offence provision within the definition of '*other prohibited conduct*' per s.5B RT (Safety & Traffic Management Act 1999.

Recommendation 13-6:

s.7 RT (Safety & Traffic Management) Act 1999

Furious, reckless or dangerous driving

Amend the provision to remove '*furiously driving*'.

Recommendation 13-7:

s.7 RT (Safety & Traffic Management) Act 1999

Furious, reckless or dangerous driving

Amend the provision to separate '*reckless driving*' from '*dangerous driving*' and include higher penalties (*Brown D 2006*).

Recommendation 13-8:

RT (Safety & Traffic Management) Act 1999

Create an offence of '*careless driving*' (*Brown D 2006*).

Recommendation 13-9:

RT (Safety & Traffic Management) Act 1999

Create a police power to seize vehicles which have been involved in a collision for the purposes of a mechanical inspection.

Recommendation 13-10:

s.53AA RT (General) Act 1999

Presumption against responsible person

Amend the provision at s.53AA RT (General) Act 1999 to apply to any offence where a requirement per s.60 RT (General) Act 1999 has been made and the person has refused or failed to identify the fleeing driver without proving their diligent enquiry in order to do so.

Recommendation 13-11:

s.60 RT (General) Act 1999

Police officer or authorised person may require people to disclose identity of driver

Amend the provision to respond to offences other than those found in the Road Transport Legislation where said offence/s are undertaken in connection with the use of a vehicle.

Recommendation 13-12:

s.60 RT (General) Act 1999

Police officer or authorised person may require people to disclose identity of driver

Amend the provision to respond to offences committed by passengers in or on a vehicle including offences other than those found in the Road Transport Legislation where said offence/s are undertaken in connection with the use of a vehicle.

Recommendation 13-13:

s.60 RT (General) Act 1999

Police officer or authorised person may require people to disclose identity of driver

Amend the provision to respond to requirements to identify the driver being made outside the ACT (for offences committed therein) and for offences committed outside the ACT where the requirement is furnished within the ACT.

Recommendation 13-14:

Div 2.3 RT (Safety & Traffic Management) Act 1999

Create a police power to seize vehicles where the driver has refused/failed to stop for police per s.109 RT (Safety & Traffic Management) Regulation 2000 and to permit police to seize a vehicle post collision or pursuit in order to inspect, test and interrogate the vehicle including its mechanical components and electronic/data systems.

Recommendation 13-15:

Div 2.3 RT (Safety & Traffic Management) Act 1999

Create a police power to seize vehicles where the driver has breached either *s.7* or at *s.7A RT (Safety & Traffic Management) Act 1999*.

Recommendation 13-16:

Div 2.3 RT (Safety & Traffic Management) Act 1999

Create a police power to seize vehicles where the registered operator or responsible person has refused or failed to identify a fleeing driver pursuant to their obligation to do so at *s.60 RT (General) Act 1999*.

Recommendation 13-17:

Div 2.3 RT (Safety & Traffic Management) Act 1999

Create a police power to seize vehicles for other high-risk driving offences regardless of how prosecuted (infringement, summons or arrest) including *RT (Alcohol & Drugs) Act 1977* driving related offences, alcohol interlock offences, high-range speeding offences and sanctioned driving offences.

Recommendation 13-18:

Div 2.3 RT (Safety & Traffic Management) Act 1999

Without limiting the existing powers, create a provision which provides police with a means to seize a vehicle by notice for production at a later time regardless of neither where the vehicle is located at the time the notice is served (public or private property) nor the service of notice for production occurring outside of the ACT.

Recommendation 13-19:

RT (Safety & Traffic Management) Act 1999

Create a statutory cost recovery or user-pays mechanism for the conveyance and storage of seized vehicles which would also operate for disposal costs where the person refuses or fails to collect the seized vehicle at the conclusion of the seizure period.

Recommendation 13-20:

s.187 CA 1900

Application of Part 1C Crimes Act 1914 (Cth)

Amend the provision to remove the Road Transport Legislation entirely from *s.187 CA 1900*.

Recommendation 13-21:

s.252G CA 1900

Interviewing children and young people about offences

Amend the provision to remove the *Road Transport Legislation* entirely in so far as it applies to young persons.

Recommendation 13-22:

s.212(1) CA 1900

Power of arrest without warrant by police officers

Amend the provision to remove the six arrest conditions as per *s.212(2) CA 1900* for an offence against *s.109 RT (Safety & Traffic Management) Regulation 2000*.

Recommendation 13-23:

Division 2.3 No presumption for bail

s.9B Bail Act 1992

Div 2.2 not to apply to certain offences

Include *s.109 RT (Safety & Traffic Management) Regulation 2000* within the schedule of offences for which there is a presumption against bail.

Recommendation 14:

Through the Police Pursuit Review Committee, ACT Policing should continue to monitor and regularly report on the work of other jurisdictions to review and measure the impact that different approaches are having on the number and outcome of police pursuits. The review should inform any amendment made to the AFP National Guideline.

Recommendation 15:

Relevant outcomes from Coronial Inquiries should inform the review of the AFP Guideline.

Recommendation 16:

Relevant considerations raised by interest groups and community stakeholders including Mr Dunn and Ms Rose should inform the review of the AFP National Guideline and legislative reforms.

Recommendation 17-1:

Noting *Recommendation 4*, as part of a reformed AFP National Guideline, combine the existing AFP National Guideline with the ACT Aide Memoires (3) to form a single AFP National Guideline.

Recommendation 17-2:

The AFP National Guideline should be supported by Annexures specific to each of the AFP's (Australian) operational jurisdictions.

Recommendation 17-3:

Formulation and endorsement of the jurisdictional annexures should be the responsibility of each AFP jurisdiction.

1. PREFACE

Police pursuits raise the fundamental question of the tensions between law enforcement and the protection of life, property and the provision of public order (Palmer, 2003).

Police do not initiate pursuits. Drivers who flee from police do. The reliable inference to be drawn from a driver who fails to stop for police is that they are attempting to avoid detection or evade apprehension.

The appropriateness of pursuing fleeing drivers and the danger posed to the community, police and the offender have been debated for as long as police have been pursuing. The debate centres on finding the balance between the risks in permitting a suspect to escape from prompt apprehension and the mitigation of risk to public safety arising from fleeing drivers.

Damned if they do, damned if they don't (Kerin, 2010).

Every time the driver of a vehicle fails to stop and engages police in a pursuit, they elevate the risk of serious injury and possible loss of life to the community, the police officer doing their duty and themselves.

Police swear an oath of office which not only encompasses enforcement of the law but to also protect and preserve life. When a police officer is considering whether to pursue a fleeing driver they are faced with a dilemma; to enforce the law by engaging in a pursuit that may impact on the safety on the community, themselves and the fleeing driver.

Police have a difficult job to continually assess the risks during a pursuit. There is an expectation by the community that police apprehend offenders, but this must be balanced with the associated risks.

This review attempts to address that balance through a focus on:

- Risk: Reduce prevalence of fleeing drivers;
- Options: provide alternatives for police to not engage in pursuits;
- Legislation: adequate penalties and deterrence;
- Accountability: fleeing drivers will be identified;
- Deterrence: to deter drivers who may want to flee from police;
- Consequences: harsher penalties for the offence;
- Community safety: minimise risk to community; and
- Police officer safety: mitigate risks to officer safety.

National Context

Between 1 January 2000 and 31 December 2011 there were 185 fleeing driver-related vehicle crashes in Australia resulting in 218 deaths. Of these deaths, 37 per cent (82) were innocent bystanders, 45 were other road users and 37 were passengers (Lyneham, 2013).

A 2003 review conducted by the Queensland Crime & Misconduct Commission summarised this debate by stating that:

. . . Law enforcement decision makers throughout the world are struggling to find the right balance between the need for police to be effective in apprehending offenders and the need for them to consistently act in a manner that minimises any risk to public safety (Barnes, 2010).

In this regard, there has been significant dialogue regarding the appropriateness of police pursuing fleeing drivers entirely or in a limited capacity, and this was expressed in a Victorian Coronial inquest (Coroner's Court of Victoria - Stage Two, 2014) which highlighted (pg. 2-3):

9. *The issues surrounding police pursuits and how, or indeed whether, they should be permitted is a much debated topic both nationally and worldwide. No more so than in the immediate wake of a person dying proximate to the conduct of a police pursuit.*
10. *The issue is by no means a simple one yet the decision to pursue can take a split second and sometimes the act of an attempted interception by police causes the target driver to go from appropriate driving to dangerously high speeds.*
11. *These deaths involve drivers of pursued vehicles, passengers in pursued vehicles and other road users, unassociated with the pursuit.*
12. *This issue often sits along side the personal responsibility of drivers who chose to evade police. Sometimes a tragedy occurs a long time after the police have attempted to intercept or pursue a driver, and nevertheless the driver has failed to moderate their driving behaviour. More and more so, circumstances involve mental health issues and almost always involve a substance affected driver.*
13. *The central questions has to be: Is the potential outcome worth the risks involved?*
14. *The answer in some ways can ultimately be put as: what risks do a well informed government and community want to assume, knowing what the potential outcome might be?*
15. *One of the central tensions to be resolved is that of the police undertaking their law enforcement responsibility and, in doing so, the risks this may create.*

In contrast and an example of the vexed and competing issue of public safety and the need for police to uphold the law, is the commentary provided by (then) Victoria Police Deputy Commissioner Kieran Walshe (Walshe, 2012) who wrote:

...This week's death of a young passenger involved in a police pursuit in Dandenong is a tragedy. Nothing less. The incident has led some people to call for a no-pursuit policy. This is something our community cannot accept.

A no-pursuit policy would give criminals a licence to evade police. It would allow those wanted for assault, robbery or even murder to know that if they do not pull over when requested by police they will not be pursued.

There must be a consequence for people who do not stop when requested to by police.

...I wish to reassure the community that a police decision to engage in a pursuit is never taken lightly. It also comes with extreme oversight. While officers are in constant communication with a pursuit controller, after each incident there is a debrief and review process.

ACT Context

In 2007 and in the absence of a standardised Australian definition, the term 'pursuit' was defined in the *AFP National Guideline: ACT Policing: Urgent duty driving and pursuits* (the AFP Guideline) to be:

An attempt by a police officer driving a police vehicle to stop a person driving another motor vehicle who, by their actions, has indicated an intention to avoid interception. These actions can include high speed driving, evasive tactics, or wilfully disobeying a direction by a member to stop. This definition includes pursuits at all speeds and over any distance and does not necessarily involve speeds in excess of prescribed speed limits.

The advent of the Australia New Zealand Policing Advisory Agency (ANZPAA) Pursuit Principles in 2013 provided the definition of pursuit to be:

A pursuit is defined as a category of police driving undertaken in circumstances where for whatever reason, the driver of the vehicle being intercepted does not stop when called upon to do so.

During the past 10 years, the ACT has experienced five incidents involving drivers fleeing from or attempting to evade police, which resulted in a fatality:

1. The death of 26 year-old Benjamin Hayes in 2004 who was fleeing from police in a stolen vehicle following a ram-raid in Evatt when involved in a high-speed single vehicle collision resulting in his unrestrained body being ejected from the vehicle.
2. The death of 21-year-old Clea Rose in 2005 after she was hit by a 14-year-old driving a stolen car through busy Civic. A pursuit had not commenced though police were attempting to intercept the vehicle involved in the collision.
3. The death of 82-year-old Heather Freeman in 2006 after the car she was driving was struck by the driver of another vehicle in Phillip. Police had been attempting to conduct a traffic stop on the vehicle prior to the collision. A pursuit had not commenced.

4. The death of Brody Oppelaar (3 months), Scott Oppelaar (33 years), Samantha Ford (29 years) and Justin Williams (23 years) in 2010 on Canberra Avenue, Fyshwick following a cross-border pursuit of a stolen vehicle by the NSW Police Force. ACT Policing members were not pursuing the vehicle.
5. The death of 38-year-old Linda Cox in 2012, a Canberra Hospital employee killed crossing the road outside the hospital in Garran after a driver evaded police and continued to travel at speed. A pursuit had not commenced prior to this collision.

AFP Framework and Review

The AFP Governance Instrument Framework (GIF) is a collection of key internal governance which helps outline the rights and obligations of AFP personnel in performing their duties, functions and powers under the *Australian Federal Police Act 1979 (Cth)*. The GIF contains internal compliance instruments and determinations that include:

- Commissioner's Orders
- National Guidelines
- Practical Guides

In 2005 the Australian and New Zealand Police Commissioner's Conference endorsed the introduction of the Australia and New Zealand Urgent Duty Driving and Pursuit Policy Guidelines. Shortly thereafter, the AFP developed the *AFP National Guideline: ACT Policing: Urgent duty driving and pursuits* policy, modelling it on the ANZPAA National Standard (Cameron, 2007).

The AFP National Guideline: ACT Policing: Urgent duty driving and pursuits (the AFP Guideline) is the leading governance for pursuits involving ACT Policing members. Authorisation for this document resides with the Chief Police Officer for the ACT (CPOACT).

The AFP Guideline makes individuals and those in certain roles responsible for the conduct of pursuits and identifies additional risk traits the police driver and Pursuit Controller must consider when assessing and commencing a pursuit, and when re-assessing that decision as a pursuit continues. Additionally, the AFP Guideline sets out criteria that [REDACTED], and prescribes the recording, reporting and review requirements and responsibilities.

The ACT Policing Police Pursuit Review Committee is a review body enacted and authorised to perform review and remediation functions prescribed by the AFP Guideline. The remit of the Police Pursuit Review Committee is to review all police pursuits in order to identify shortcomings or trends, to identify training requirements, to report quarterly to the CPOACT, and to make recommendations to the CPOACT for amendment to the AFP Guideline as required. The Police Pursuit Review Committee meets at least fortnightly or by exception following a critical or significant incident warranting timely assessment.

In 2007 an internal review of the AFP Guideline was conducted (Close, 2007), finding that the guideline was '*comprehensive, explicit and appropriate*'. This internal review was then scrutinised by an external party, who concluded that the AFP review '*was thoroughly and professionally conducted, and has correctly identified some issues which require attention*' (Cameron, 2007).

ACT Policing Review

On 17 April 2014 CPOACT endorsed the Terms of Reference for a review of police pursuits to be conducted by a Working Group of the Police Pursuit Review Committee. The aim of the review was to provide advice and recommendations to the CPOACT about the AFP's pursuit policy, governance and procedures. A particular emphasis was placed on an analysis of recent pursuits to explore whether AFP policy mechanisms provide a genuine and appropriate level of protection to the community, police and to the occupants of the vehicle fleeing from police.

Analysis of pursuits

The review conducted by the Police Pursuit Review Committee Working Group of police pursuits in the ACT occurring between 1 March and 30 April 2014 showed the following:

- An average of 8.5 pursuits per month.
- An average pursuit duration of two minutes and fifty two seconds.
- Pursuits are more likely to occur between 1800hrs and 0600hrs.
- Traffic offences are the most prevalent reason for the initiation of a pursuit.
- The two most common reasons for the conclusion of a pursuit are termination by police arising from either the dangerous driving manner of the pursued driver, and losing sight of the target vehicle.
- Most pursuits are conducted in light traffic conditions, and conducted on dry sealed roads during fine weather conditions.
- An average of 12.3 years policing experience for ACT Policing members conducting pursuits.

An examination of six case studies between 1 March and 31 August 2014 showed:

- All pursuits were the result of proactive patrolling by ACT Policing response members.
- There were no crashes or injuries to public, police or offending drivers.
- All pursuits were in Canberra suburbs, on good quality bitumen roads in varying weather conditions.
- Deficiencies were identified in the submission of pursuit-related documentation (one case) and communications between ACT Policing Operations and the pursuing police vehicle (two cases).

An examination of prosecutions and court outcomes between January 2013 and 30 April 2014 showed:

- Approximately 40 per cent of pursuits resulted in a prosecution.
- In most instances, further charges were laid in addition to those relating to the offender failing to stop.

In the ACT there are two recent coronial reports arising from police pursuits and a number of persuasive precedent cases arising from interstate including a NSW Deputy Coroner's findings into the death of a young motorcyclist during a police pursuit in Sydney. The NSW coronial inquest is pertinent to this review because it recommends a review of the *NSW Police Force Safe Driving Policy*, and raises some highly pertinent issues that should form part of a review of an AFP pursuit policy.

A high level jurisdictional review revealed that there were notable differences in both police pursuit policies and surrounding legislative provisions across the country.

Notwithstanding these differences, all Australian policing services possess pursuit policies, bodies of review, Professional Standards portfolios with oversight, an independent (police) collision investigation regime, and coronial jurisdiction for deaths which are a consequence of a police pursuit.

2. INTRODUCTION

2.1 Purpose

This document will provide advice and recommendations to the Chief Police Officer for the ACT (CPOACT) concerning the adequacy of AFP policy, governance and procedures in relation to urgent duty driving and police pursuits in the ACT.

The review includes an analysis of case studies and statistical data to examine the adequacy of AFP governance in order to assess the extent of protection for the community, police officers and the AFP.

This review has made recommendations for legislative reform to be advocated by CPOACT where opportunities to do so are identified.

2.2 Scope

The Terms of Reference for this review have been provided and are summarised as:

- The adequacy of the current governance, procedures and framework of police pursuits in the ACT and the level of member compliance.
- Analysis of recent pursuits in the ACT, including:
 - the reason and/or offence for the initial pursuit.
 - duration, speed, weather, traffic and road conditions.
 - skills and experience of the ACT Policing member/s in the pursuit.
 - skills and experience of the ACT Policing Pursuit Controller (Operations Sergeant), and
 - how the pursuit was documented, examined and reviewed, and any recommendations implemented.
- Compliance with Workplace Health and Safety legislation, policy and practices.
- Comparison of other state and territory police pursuit policies to identify best practice and possible risk mitigation strategies.
- Consideration of Coronial recommendations relating to police pursuits which have resulted in death or serious injury, including interstate.
- Consideration of views and recommendations from community groups or individuals affected by road trauma.
- Consultation with key Government stakeholders, including the ACT Justice and Community Safety Directorate (JaCS) and the ACT Director of Public Prosecutions (ACT DPP).

2.3 Acknowledgements

This document acknowledges the following:

- Australian New Zealand Policing Advisory Agency
- Various ACT Policing portfolios, including Traffic Operations and Police Operations;
- ACT Policing - Police Pursuit Review Committee;
- AFP Workplace Health and Safety Team;
- Other Australian policing jurisdictions;
- AFP Chief Driving Instructor;
- ACT Director of Public Prosecutions;
- ACT Justice and Community Safety Directorate;
- ACT Coroner's Office; and
- Ross Dunn and Frances Rose.

2.4 Circulation of draft

Prior to final publication of this review, the following contributors or sources of cited material were provided with a copy of the final draft or excerpts, and were invited to make comment:

- Australia New Zealand Police Advisory Agency
- New South Wales Police Force
- Northern Territory Police
- Queensland Police Service
- South Australia Police
- Tasmania Police
- Victoria Police
- Western Australia Police
- ACT Director of Public Prosecutions
- ACT Justice and Community Safety Directorate
- ACT Coroner
- Mr John Cadogan
- Alternative Law Journal
- New South Wales Coroner
- New South Wales Law Society
- Northern Territory Lawyer's Association
- Victorian Coroner

3. CURRENT OPERATING CONTEXT

3.1 Pursuits & Urgent Duty Driving

The *AFP National Guideline: ACT Policing: Urgent duty driving and pursuits* (the AFP Guideline) is the leading control mechanism for pursuits involving ACT Policing members. ACT Policing members must comply with the AFP Guideline when engaging in urgent duty driving and pursuits.

Urgent Duty Driving is required by police officers in responding to emergencies and calls to assist the public, and is evidenced by a reasonable need to depart from the road rules in order to do so. The AFP Guideline defines Urgent Duty Driving as *'...driving a police vehicle in response to a specific incident or emergency that would ordinarily constitute an offence against the Australian Road Rules in that jurisdiction'*.

A pursuit differs from Urgent Duty Driving in that it involves a direction being issued by a police officer for the driver of a motor vehicle to stop, and the driver refuses or fails to do so and attempts to flee from police. The AFP Guideline defines a pursuit as *'...an attempt by a police officer driving a police vehicle to stop a person driving another motor vehicle who, by their actions, has indicated an intention to avoid interception. These actions can include high speed driving, evasive tactics, or wilfully disobeying a direction by a member to stop. This definition includes pursuits at all speeds and over any distance and does not necessarily involve speeds in excess of prescribed speed limits.'*

Police do not initiate pursuits. The driver of a vehicle who is lawfully required and obliged to stop, initiates a pursuit when he or she fails or refuses to do so and flees from police:

'Some of the more dangerous or reckless acts of driving are committed by drivers who do not stop when required to do so by the police and are consequently pursued...Passengers, the pursuing police officers, police officers attempting to set up road blocks, other drivers on the roads, pedestrians and the public in general are put at considerable risk during these police pursuits' (Brown, 2006).

Notwithstanding the commentary provided by Brown, police officers owe the same duty of care on the roads as any other person *Gaynor –v– Allen* (1959) 2 All ER 644 and appropriately, the AFP Guideline reflects this outlook:

Part 6

There are serious safety risks associated with police officers driving at speeds in excess of prescribed speed limits, and with the pursuit of drivers who refuse to comply with a direction to stop. The sworn duty of a police officer to protect life and property will always have primacy over the need to apprehend offenders, especially when the offence involved is relatively minor, or where there are safer options other than immediate apprehension.

Part 7

b. The risks involved in these activities require the demonstration of a high standard of professionalism and care and do not justify placing police or the community at unreasonable risk.

- d. *Officers who choose not to commence a pursuit or to abandon one that has commenced will be fully supported by the AFP, even if it results in an offender escaping immediate detention or from being prosecuted.*

Part 24

Where the value of apprehending an offender in a pursuit, is outweighed [by various factors]... the member who is the driver of the vehicle involved in the pursuit will terminate that pursuit.

3.2 Provision of ACT Policing services to the Australian Capital Territory

The AFP is engaged to provide a policing service to the ACT under the auspices of the *2011-2016 Policing Arrangement for the provision of police services to the Australian Capital Territory*, and uses two mechanisms to do so;

Purchase Agreement

An annual agreement provided for under the Policing Arrangement between the ACT Minister for Police and Emergency Services, the AFP Commissioner, and the Chief Police Officer for the ACT setting out details of goods and services purchased by the ACT from the AFP, the agreed price for those services payable by the ACT to the AFP and the reporting by the AFP on performance.

At the time of writing this review, the 2014-15 Purchase Agreement comprised four pillars including the *Traffic Law Enforcement and Road Safety* pillar which broadly requires ACT Policing to 'enforce traffic laws and promote safer behaviour on ACT roads with the objectives of reducing the number of crash fatalities and injuries to members of the community'.

The 2015-16 Purchase Agreement signed on 3 June 2015 retains a similarly themed road safety and traffic management output under a new public safety outcome.

Ministerial Direction

The Policing Arrangement (s.6) outlines that the Police Minister may give to the Chief Police Officer general directions to policy, priorities and goals in relation to the police services provided by the AFP.

The 2014-15 Ministerial Direction from the ACT Minister for Police and Emergency Services required that ACT Policing focus on road safety issues, particularly in relation to anti-social and dangerous driving behaviours.

The 2015-16 Ministerial Direction from the ACT Minister for Police and Emergency Services requires that ACT Policing focus on road safety issues, particularly in relation to anti-social and dangerous driving behaviours both around school precincts, and generally.

3.3 Adequacy of Current Operational Practices

Three reviews of pursuits were undertaken by the Police Pursuit Review Committee Working Group:

- | | |
|--|---------------------------|
| 1. Review of pursuits | 1 March – 30 April 2014 |
| 2. Review of compliance with the AFP Guideline | 1 January – 30 April 2014 |
| 3. Case study analysis | 1 March – 30 August 2014 |

3.3.1 Review of Pursuits

A review of data relating to pursuits conducted in the ACT was undertaken for the period 1 March to 30 April 2014 inclusive.

The findings of the Police Pursuit Review Committee Working Group are as follows:

Number of pursuits:

A total of 17 pursuits, at an average of 8.5 per month.

Duration of pursuits:

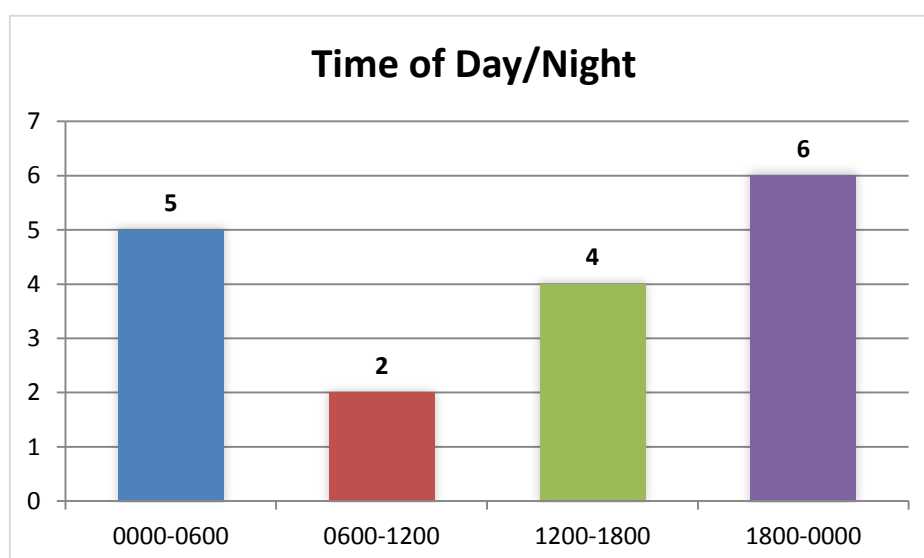
The average duration of the pursuits was two minutes fifty-two seconds.

The longest pursuit was 10 minutes; the shortest was 10 seconds.

Sixty three per cent of pursuits were under three minute's duration.

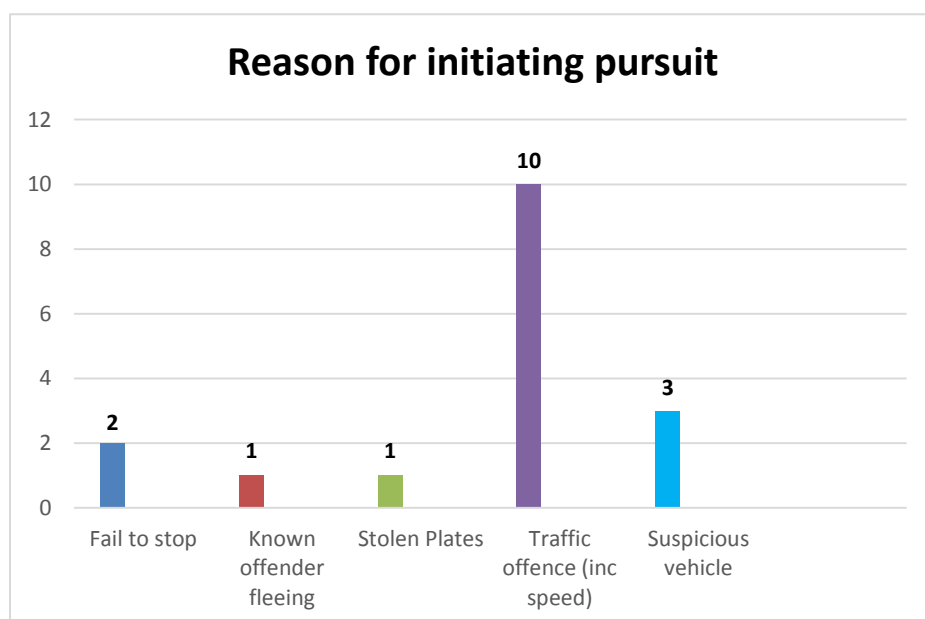
Time of day/night:

The highest number of pursuits was conducted during the hours of darkness, between 1800hrs and 0600hrs:



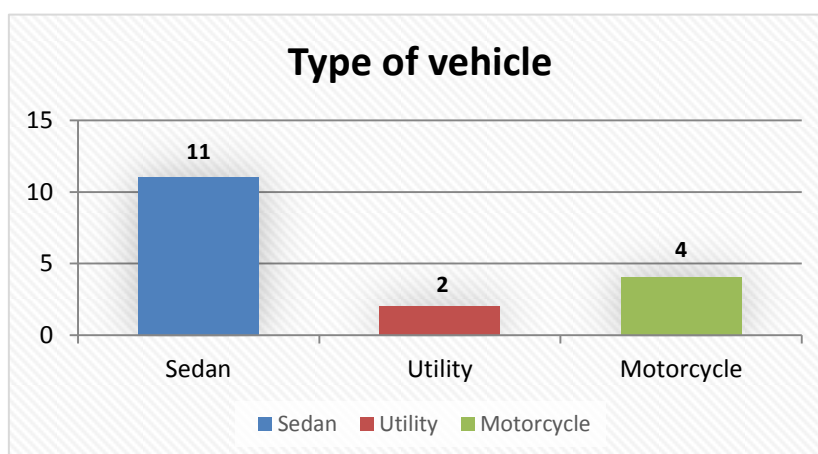
Reason for initial pursuit:

By far the most prevalent reason for members initiating a pursuit was in response to the commission of a traffic offence. These included fail to stop, burnout, not display registration plate, or display obscured, registration plate and excessive speed:



Type of vehicle being pursued:

Sedans were the most commonly pursued type of vehicle during the period (65 per cent). Twenty three per cent of pursuits involved a fleeing motorcycle:



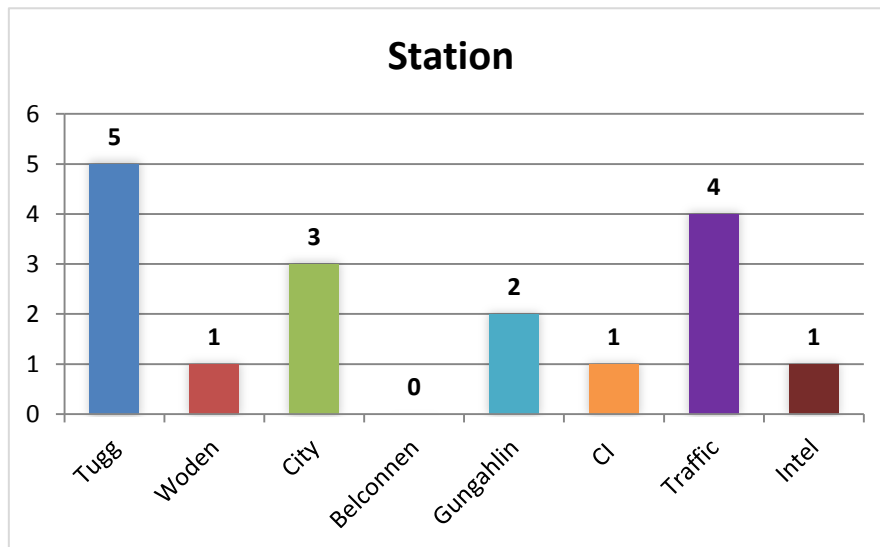
Experience of ACT Policing driver:

The average policing experience of the police officer driver was 12.3 years. This high level of experience may suggest that senior members are more likely to engage in a pursuit than junior members. There are a number of possible reasons for this:

- Senior members possess more confidence and skill to undertake a pursuit; and
- Senior members possess stronger patrol craft and therefore identify offenders that lead to pursuits.

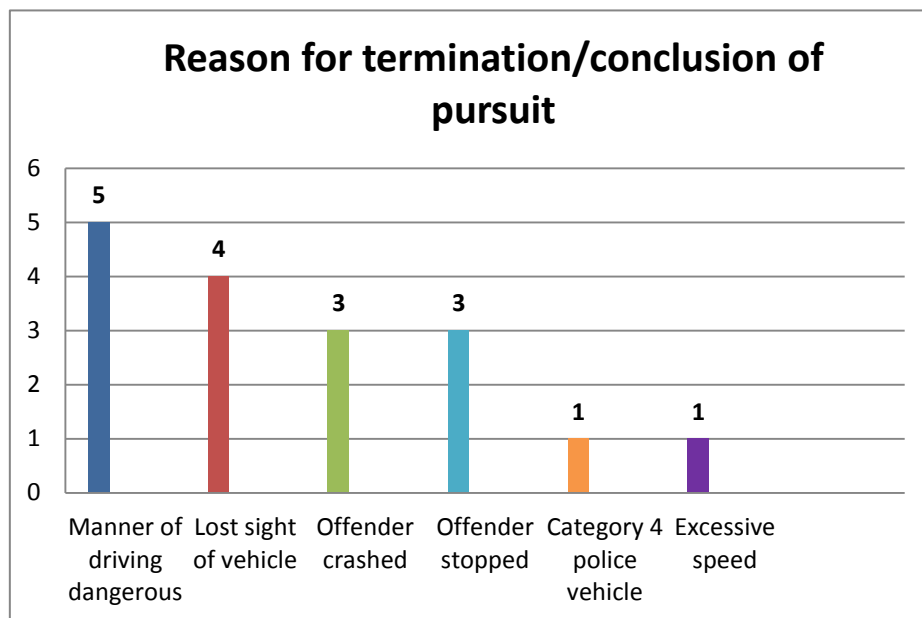
Station of pursuit driver:

Tuggeranong Patrol members instigated the most pursuits (5) and Belconnen members the least (0):



Reason for termination/conclusion of pursuit:

The two most common reasons for a pursuit terminating or concluding were the dangerous driving manner of the offender (terminated by police) and police losing sight of the vehicle (continuance was futile). Three pursuits resulted in the offending vehicle colliding with an object:



Source of pursuit termination:

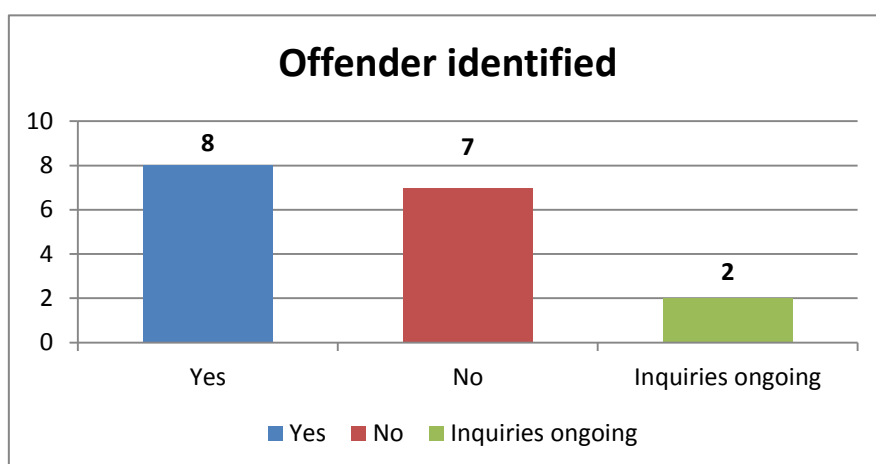
Of the 17 pursuits, nine were terminated by the police driver.

Experience of Operations Pursuit Controller:

The average policing experience of the Pursuit Controller was 20.6 years. The average Police Operations portfolio experience of the Pursuit Controller was just over 13 months, possibly reflected by the current two-year rotation policy for ACT Policing Sergeants.

Offender identified:

A total of eight offenders were identified following a pursuit (47 per cent). Seven pursuits resulted in an offender not being identified. Of those offenders identified, six have been charged, with inquiries ongoing (unresolved) on the remaining two:



Additional assessment

- There were no cross-jurisdictional pursuits during this period and no pursuits in which stop sticks were able to be deployed
- Three of the 17 pursuits resulted in the offender's vehicle colliding with an object/property.
- All but one pursuit was conducted in either light or no traffic (one was in medium traffic conditions).
- All but four of the pursuits were conducted on dry roads.
- All but four of the pursuits were conducted in fine weather conditions.
- There was no information collected on average or highest speeds.
- The Police Pursuit Review Committee identified that one of the 17 pursuits required further discussion at a later committee meeting regarding the pursuit of a motorcycle by Traffic Operations members which resulted in the offending motorcyclist falling from the motorcycle.

Key Findings

The following observations were identified through analysis of the data however caution should be exercised in drawing any trends from this data given the short timeframe:

- The average number of pursuits in the ACT is 8.5 per month. This is consistent if not slightly less than the longer-term findings of the Police Pursuit Review Committee and does not suggest a rising trend;
- The overwhelming reason for a pursuit being initiated is in response to a traffic offence being committed. This is consistent with the findings of the Police Pursuit Review Committee and of other jurisdictions;

- The policing experience of the pursuing police driver and the Pursuit Controller is high, with an average of 12.3 years and 20.6 years respectively;
- The average length of a pursuit is two minutes fifty two seconds. This is consistent with the findings of the Police Pursuit Review Committee and does not suggest an escalating trend;
- A higher portion of pursuits is undertaken between 1800hrs and 0600hrs. This is consistent with findings from other Australian jurisdictions through the Australian Institute of Criminology (Lyneham, 2013); and
- Tuggeranong members initiated a higher number of pursuits than any other station/area.
- Police reports created for these 17 pursuits show full compliance with documentation requirements, including the completion and uploading of driver debrief and Pursuit Controller debrief forms.

3.3.2 Review of compliance with the AFP Guideline

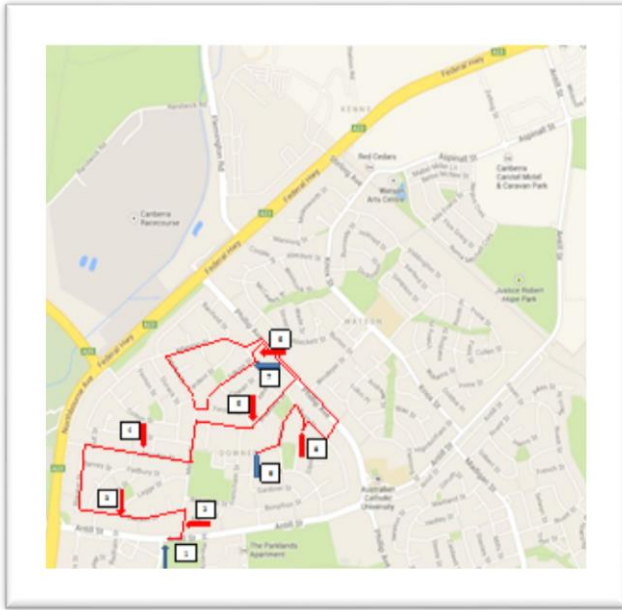
Between 1 January and 30 April 2014 there were 28 pursuits in the ACT, all of which have been reviewed by the Police Pursuit Review Committee and were deemed to have been compliant with the AFP Guideline.

Six cases were randomly selected by the Police Pursuit Review Committee Working Group for in-depth analysis to consider the findings of the committee in relation to compliance with the AFP Guideline:

- Case Study 1: PROMIS No. 5555902
23 January 2014
- Case Study 2: PROMIS No. 5557222
26 January 2014
- Case Study 3: PROMIS No. 5559366
30 January 2014
- Case Study 4: PROMIS No. 5592005
1 April 2014
- Case Study 5: PROMIS No. 5594608
5 April 2014
- Case Study 6: PROMIS No. 5556794
10 April 2014

3.3.2.1 Case Study 1

PROMIS No. 5555902



Police Pursuit Review Committee Working Group Assessment

Pursuit occurred about 2.55pm on Thursday 23 January 2014 in Downer ACT. The Police Pursuit Review Committee reviewed this pursuit and found that it was compliant with the AFP Guideline.

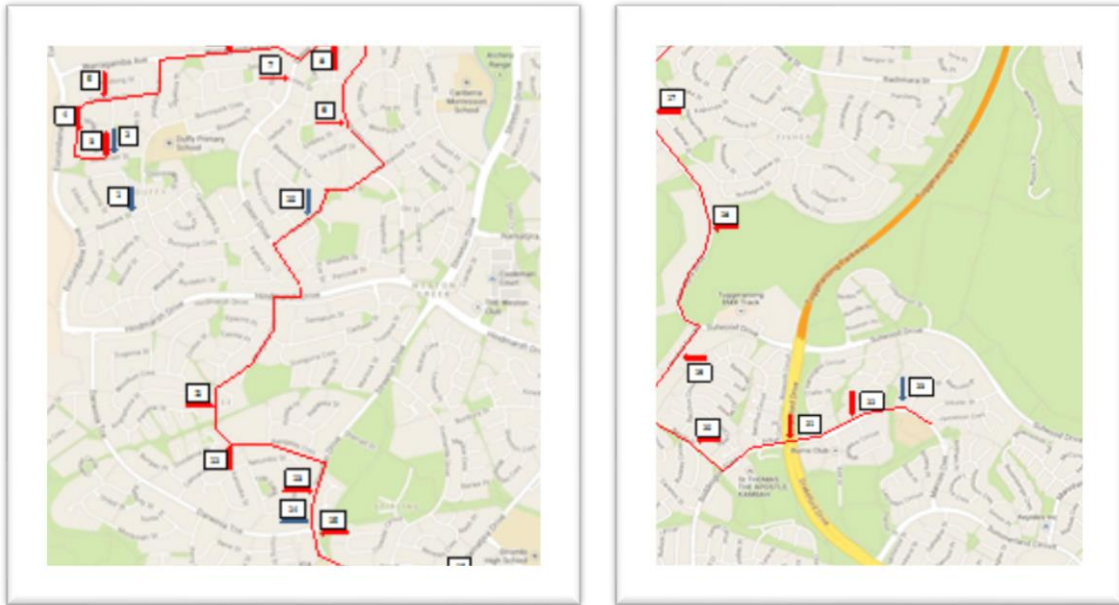
This pursuit resulted when Response (General Duties) members conducting proactive patrols pulled alongside a vehicle that appeared to have tampered number plates. This pursuit lasted three minutes covering a distance of 6.1km in dry conditions on quality bitumen roads reaching a maximum estimated speed of 120km/h in a 50km/h speed limited zone reaching a natural conclusion after a short foot pursuit and arrest of the offending driver.

A review was conducted by the Police Pursuit Review Committee Working Group and found the following:

1. There was to some extent a variation between the Driver Report, Controller Report and PROMIS case write off as a result of incomplete radio transmissions.
2. Radio transmissions from the pursuing police vehicle provided an incomplete representation of the pursuit for the Pursuit Controller.
3. There were numerous opportunities to assess and reassess the situation, especially the estimated speeds which are documented as being 70km/h above the posted speed limit, the offending vehicle travelling on the incorrect side of the road for approximately 500m/20 seconds and documentation on how the dangerous driving by the fleeing driver had jeopardised the safety of other road users. Although the police driver was a qualified pursuit driver, of concern is the speeds – estimated as 70km/h above the posted speed limit – were on suburban back streets during summer school holidays around mid-afternoon when it would be reasonable to assume children may be outside their residences.
4. The fleeing driver was apprehended and charged.

3.3.2.2 Case Study 2

PROMIS No. 5557222



Police Pursuit Review Committee Working Group Assessment

Pursuit occurred about 3.17am on Sunday 26 January 2014 commencing in Duffy and concluding in Kambah ACT. The Police Pursuit Review Committee reviewed this pursuit and found that it was compliant with the AFP Guideline.

The pursuit commenced when Response (General Duties) members performing RBT attempted to stop the vehicle. The pursuit was conducted at 3.17am lasting 8 minutes and covering a distance of 11.5km in dry conditions on good quality bitumen roads reaching a maximum speed of 140/60km/h before being terminated by the Pursuit Controller after the fleeing driver went through a red light.

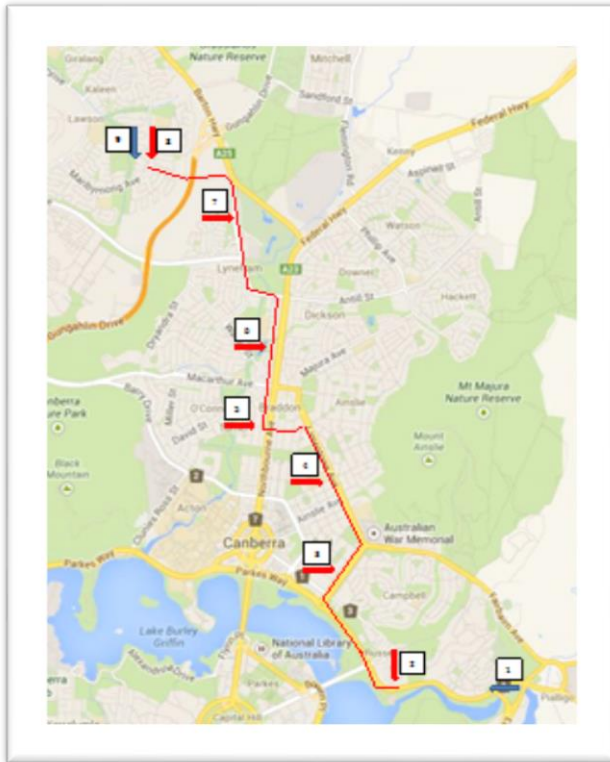
A review was conducted by the Police Pursuit Review Committee Working Group and found the following:

1. This pursuit was well called by the Response vehicle with clear, concise and accurate communications at all times which is critical in assisting the Pursuit Controller to determine the risk to the public.
2. Due to length and nature of this pursuit travelling from Duffy through to Kambah, several police vehicles became involved in the pursuit, however the opportunity to deploy stop sticks was not availed. There was clear indication early on that the fleeing driver had no intention of stopping and that the pursuit would need close assessment. These indicators included the vehicle of interest turning off headlights while travelling at high speed in the suburban area.
3. Other opportunities to terminate the pursuit occurred when the vehicle of interest crossed onto the wrong side of the road on several occasions and disobeyed a red traffic signal, at which point the Pursuit Controller terminated the pursuit.
4. Due to the time of the pursuit there was a low risk to the public. The motivation for the fleeing driver to not stop for police remains unknown.

5. All documentation was submitted within the requisite timeframes, with some minor discrepancies between the driver and controller report, however this is acceptable given they were written independently of each other.
6. The fleeing driver has not been identified.

3.3.2.3 Case Study 3

PROMIS No. 5559366



Police Pursuit Review Committee Working Group Assessment

Pursuit occurred about 1.42am on Thursday 30 January 2014 commencing in Pialligo and concluding in Kaleen ACT. The Police Pursuit Review Committee reviewed this pursuit and found that it was compliant with the AFP Guideline.

This pursuit commenced when a Response (General Duties) supervisor attempted to pull over a motorcycle in relation to traffic matters. The pursuit was conducted in dry conditions, light traffic on good quality bitumen roads and lasted nine minutes covering a total distance of 11.5km reaching a maximum speed of 135/80km/h zone before being terminated by the Pursuit Controller.

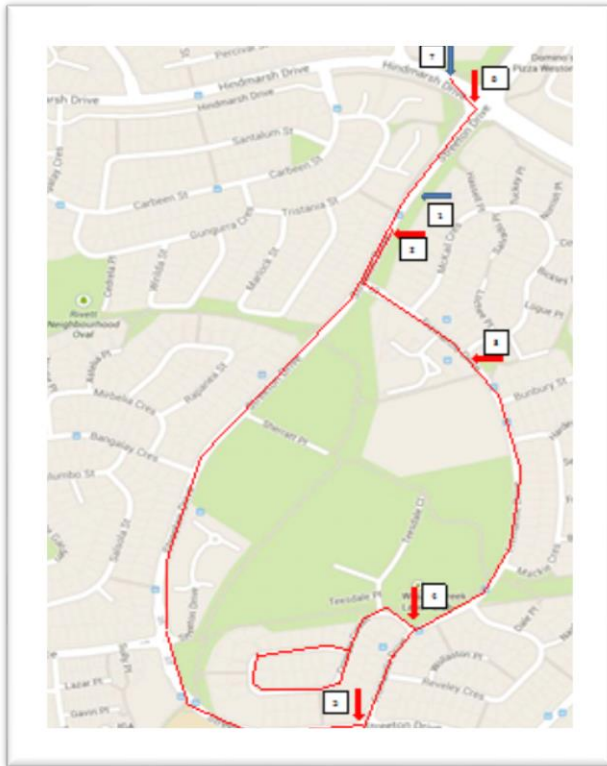
A review was conducted by the Police Pursuit Review Committee Working Group and found the following:

1. This pursuit was well called by the Response Patrol vehicle with clear and concise communications which assisted the Pursuit Controller to make a valid individual assessment as the pursuit progressed. Tyre deflation devices were requested and appropriately denied by the Pursuit Controller because the vehicle of interest was a motorcycle.
2. The primary police vehicle was a single member patrol and accordingly members in a secondary police vehicle called the pursuit however, assessment and reassessment of the pursuit rested with the primary vehicle.

3. Pursuit was terminated by the Pursuit Controller because the fleeing rider went off road and started using pedestrian paths.
4. All documentation was accurate and submitted within the requisite timeframes.
5. The fleeing rider has not been identified.

3.3.2.4 Case Study 4

PROMIS No. 5592005



Police Pursuit Review Committee Working Group Assessment

Pursuit occurred about 10.44am on Tuesday 1 April 2014 commencing in Stirling ACT. The Police Pursuit Review Committee reviewed this pursuit and found that it was compliant with the AFP Guideline.

The pursuit commenced when Response (General Duties) members observed a motorcycle with an obscured number plate. The pursuit lasted three minutes covering a total distance of 4.5km reaching a maximum speed of 100/40km/h zone, with the pursuit terminated by the police driver when considered unsafe.

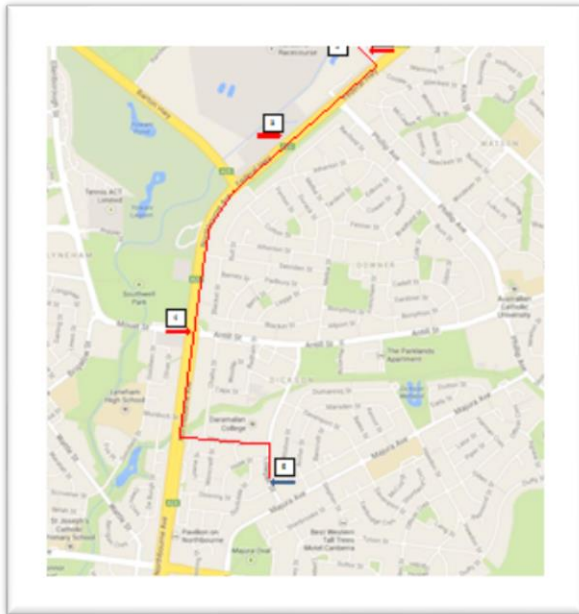
A review was conducted by the Police Pursuit Review Committee Working Group and found the following:

1. The pursuit was well called by the Response vehicle with clear and concise communication enabling the Pursuit Controller sufficient information to make sound judgments.
2. Initial observations of the rider of the motorcycle involved in this pursuit was that he was lacking confidence, however riding within reasonable parameters throughout the pursuit.
3. Despite the rider crossing onto the incorrect side of the road on several occasions, the police pursuit driver and controller did not terminate the pursuit because the risk posed by the rider's conduct was appreciated as low.

4. Termination occurred when the rider crossed a median onto the incorrect side of a multi-lane arterial carriageway, presenting an unacceptable risk to continue the pursuit.
5. All documentation was consistent and submitted within the requisite timeframes, however there is some discrepancy between the driver and Pursuit Controller reports in relation to actual speed attained by the vehicle of interest on Fremantle Drive.
6. The motorcycle was later located and found to have been stolen.
7. The fleeing rider has not been identified.

3.3.2.5 Case Study 5

PROMIS No. 5594608



Police Pursuit Review Committee Working Group Assessment

Pursuit occurred about 10.12pm on Saturday 5 April 2014 commencing in Mitchell and concluding in Dickson ACT. The Police Pursuit Review Committee reviewed this pursuit and found that it was compliant with the AFP Guideline.

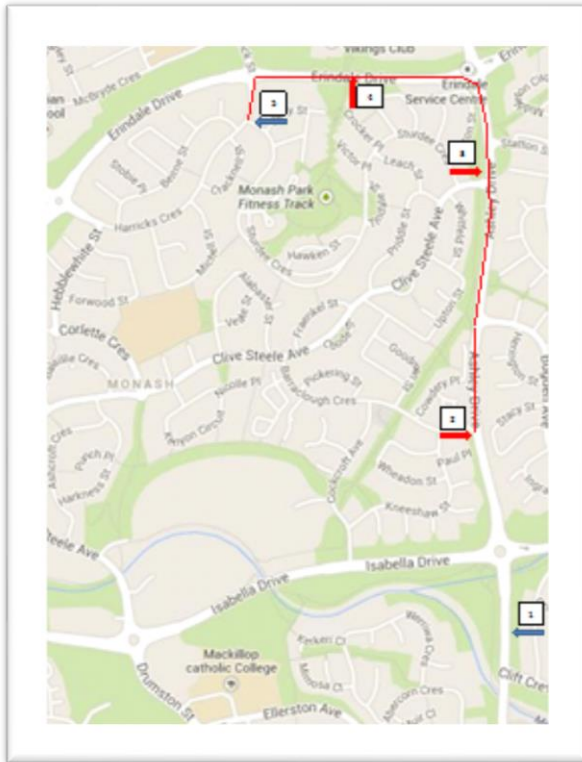
This pursuit commenced when Response (General Duties) members on routine patrol observed a vehicle that appeared to be avoiding police detection. The pursuit lasted nine minutes covering 3.6km with an estimated maximum speed of 124/80km/h zone before the vehicle of interest stopped and the driver was apprehended. The weather was overcast and following light rain the bitumen road surface was wet but in good condition.

A review was conducted by the Police Pursuit Review Committee Working Group and found the following:

1. Prior to the driver being directed to stop and subsequently fleeing from police, there were indications the driver was avoiding apprehension when driving at speed and without vehicle lighting illuminated.
2. Upon fleeing from police, the driver used a bicycle lane to overtake another vehicle travelling in the same direction but would slow at intersections.
3. The police primary vehicle calls to communications were problematic in that too much information was being passed at a fast rate. This was further complicated by over talking and attempts by Police Operations to feed this information back to the police involved with the pursuit.
4. The vehicle of interest stopped and the driver was arrested and charged with a number of traffic offences.
5. All documentation was accurate and submitted within the requisite timeframes.

3.3.2.6 Case Study 6

PROMIS No. 5556794



Police Pursuit Review Committee Working Group Assessment

Pursuit occurred about 12.38am on Thursday 10 April 2014 commencing and concluding in Monash ACT. The Police Pursuit Review Committee reviewed this pursuit and found that it was compliant with the AFP Guideline.

This pursuit commenced when Response (General Duties) members observed a vehicle committing traffic offences by doing a burn-out then drifting through a roundabout in wet conditions. The pursuit lasted one minute and 2.9km with a maximum estimated speed of 140/80km/h zone before being terminated by the police driver due to elevated risk arising from the wet weather conditions. The bitumen road surface was wet but in good condition.

A review was conducted by the Police Pursuit Review Committee Working Group and found the following:

1. The driver was directed to stop and almost did so before fleeing from police.
2. The pursuit was well called by the Response Team primary vehicle with a calm demeanour and clear concise communications at all times. The Operations pursuit warning was delivered late and generally considered average.
3. The police vehicle identified the registration plate number early in the pursuit and then terminated the pursuit due to wet weather conditions.
4. All documentation was accurate and submitted within the requisite timeframes.

3.3.3 Case Study Analysis

Following the statistical analysis of pursuits conducted 1 January - 30 April 2014, a more in-depth case study analysis was undertaken for pursuits occurring 1 March – 30 August 2014 in order for the Police Pursuit Review Committee Working Group to:

1. Consider the appropriateness of each pursuit in relation to the AFP Guideline; and
2. Consider the way in which the pursuit was documented and reviewed, and any recommendations implemented as a result.

An additional seven cases were randomly selected by the Police Pursuit Review Committee Working Group for an in-depth analysis.

- Case Study 7: PROMIS No. 5590229
28 March 2014
- Case Study 8: PROMIS No. 5622803
29 May 2014
- Case Study 9: PROMIS No. 5640942
5 July 2014
- Case Study 10: PROMIS No. 5646331
17 July 2014
- Case Study 11: PROMIS No. 5650226
24 July 2014
- Case Study 12: PROMIS No. 5647121
28 July 2014
- Case Study 13: PROMIS No. 5655047
2 August 2014

3.3.3.1 Case Study 7

PROMIS No. 5590229

About 9.59pm on Friday 28 March 2014 a pursuit was commenced by Traffic Operations members on Long Gully Road, Isaacs. Traffic members witnessed a motorcycle without registration plates overtaking vehicles on double unbroken lines. The pursuit continued through the southern suburbs terminating when the vehicle of interest collided with a kerb of a roundabout in Tuggeranong at the 4min50sec mark. There were no injuries. The maximum speed reached was 204km/h in a 100km/h zone. The offender, a 30-year-old male, was a suspended driver who had never held a motorcycle licence. The motorcycle did not belong to him. He was charged with traffic offences related to the above, as well as drive with a prescribed drug in his blood.

Offender:	Identified
Offences:	Fail to stop Dangerous driving Drive whilst suspended Drive with prescribed drug Unregistered vehicle No Third Party Insurance
Charged:	Summons
Court result:	Convicted with recognisance – 24 months Community Service Order – 180 hours Disqualified from driving for three years
Legislative impediments:	There were nil legislative impediments encountered in this case

3.3.3.2 Case Study 8

PROMIS No. 5622803

About 11.50pm on Thursday 29 May 2014 a pursuit was commenced when police attempted to stop a vehicle which had been subject of a traffic complaint from a member of the public. The pursuit continued for 21 minutes. Top speeds reached were 130km/h in a 100km/h zone. The pursuit commenced in O'Connor and continued in the northern ACT suburbs before the pursuit was terminated when the offender crossed the border into NSW on the Barton Hwy. The offender (young person) was summoned to attend court for traffic offences relating to the above matters. The offender still has access to his motor vehicle and is able to drive on ACT roads, albeit he is an unlicensed driver.

Offender:	Identified
Offences:	Aggravated dangerous driving Unaccompanied learner Arson
Charged:	Summoned To be charged with failing to stop To be charged with obstruction
Court result:	Offender is presently on Court bail

Legislative impediments: There were legislative impediments encountered in this case resulting in the offending driver not being adequately sanctioned

3.3.3.3 Case Study 9

PROMIS No. 5640942

About 8.30pm on Saturday 5 July 2014 a pursuit commenced when police observed a silver hatchback without headlights on. A traffic stop was attempted however, the vehicle did not stop. Police observed a young child in a booster seat in the rear passenger side of the car and the pursuit was terminated. The highest speed reached during the pursuit was 98km/h in a designated 80km/h zone. The vehicle is registered to a female disqualified driver. Police visited the registered owner/address of the vehicle. Although the vehicle has been sighted at the registered premises, the owner has refused to speak to police. Police have no evidence to charge the female or power to seize the vehicle.

Offender: Suspect identified – cannot be proven
Offences: Aggravated dangerous driving
Failing to stop
Disqualified driving
Charged: Not charged – identity cannot be established.
Court result: Not applicable
Legislative impediments: There were legislative impediments encountered in this case resulting in the offending driver not being adequately sanctioned

3.3.3.4 Case Study 10

PROMIS No. 5646331

About 10.48am on Thursday 17 July 2014 a pursuit commenced when police observed a vehicle in the Gungahlin area. The fleeing driver involved in this pursuit is the suspect for Case Study 9 occurring Saturday 5 July 2014. Police attempted to stop the vehicle but it appeared the female driver was deliberately ignoring police. Two children were seen in the rear seat of this vehicle and the pursuit was immediately terminated.

Offender: Suspect identified – cannot be proven
Offences: Aggravated dangerous driving
Failing to stop
Charged: Not charged – identity cannot be established.
Court result: Not applicable
Legislative impediments: There were legislative impediments encountered in this case resulting in the offending driver not being adequately sanctioned

3.3.3.5 Case Study 11

PROMIS No. 5650226

About 10.49pm on Thursday 24 July 2014 a pursuit was commenced by Traffic Operations members in Belconnen when the vehicle of interest was noticed speeding and failed to stop when directed by police. The pursuit continued through the northern suburbs of Canberra terminating at the Queanbeyan border after 17 minutes. The

maximum speed reached was 180 km/h in an 80 km/h zone. During that time, four separate pursuits were commenced and terminated and involved multiple police vehicles. The last pursuit was terminated simultaneously by the police driver and the Pursuit Controller when the vehicle of interest crossed onto the incorrect side of Canberra Avenue and commenced to travel east in the westbound lanes. The owner of the vehicle, a male known to police, reported the vehicle stolen the day after the pursuit. The identity of the driver could not be ascertained and the Stolen Motor Vehicle report could not be disproved.

Offender:	Suspect identified – cannot be proven
Offences:	Aggravated dangerous driving Failing to stop Speeding
Charged:	Not charged – identity cannot be established.
Court result:	Not applicable
Legislative impediments:	There were legislative impediments encountered in this case resulting in the offending driver not being adequately sanctioned

3.3.3.6 Case Study 12

PROMIS No. 5647121

About 10.04am on Monday 28 July 2014 a pursuit commenced when the vehicle of interest was seen to travel through a red light without stopping. The pursuit continued for 9 minutes. Top speed reached was 115km/h in an 80km/h zone. The pursuit commenced in Woden and continued into the northern suburbs of Belconnen before the vehicle of interest was involved in a minor collision with the kerb of the roadway. There were nil injuries. The offender was apprehended. The offender has since been summoned to attend court for offences.

Offender:	Identified
Offences:	Prescribed Concentration of Alcohol Dangerous driving Unlicensed driver Unregistered vehicle No Third Party Insurance Number plates not properly issued
Charged:	Arrest
	Court result: Fined total \$2050 4 months suspended sentence – recognisance Disqualified from driving for 12 months
Legislative impediments:	There were no legislative impediments encountered in this case

3.3.3.7 Case Study 13

PROMIS No. 5655047

About 10.24pm on Saturday 2 August 2014 a pursuit was commenced by Traffic Operations members when the vehicle of interest was noticed speeding and failed to stop when directed by police. The pursuit continued through the southern suburbs of Canberra terminating at the NSW border after 18mins. The maximum speed reached was 160km/h in an 80km/h zone. The vehicle involved is registered to a person known to police who has a suspended licence. The identity of the driver could not be ascertained and there is insufficient evidence to charge any person with offences relating to this pursuit.

Offender	Not identified
Offences:	Aggravated dangerous driving Failing to stop Suspended driver
Charged:	Not charged – identity cannot be established.
Court result:	Not applicable.
Legislative impediments:	There were legislative impediments encountered in this case resulting in the offending driver not being adequately sanctioned.

3.3.3.8 Key Findings

A summary of findings by the Police Pursuit Review Committee Working Group with regard to the 13 case studies includes:

- All pursuits were the result of proactive patrolling by ACT Policing Response members who identified traffic violations as the primary indicator causing focus on the vehicle of interest;
- Out of the six case studies (1-6) occurring between 1 January – 30 April 2014, two resulted in arrest, two were terminated by the Pursuit Controller and two were terminated by the police driver. There were no crashes and no injuries to public, police or offending drivers;
- Out of the additional seven case studies (7-13) occurring between 1 March – 30 August 2014, four were not actioned because the driver could not be proven, five pursuits terminated by police (including two upon entering NSW) and two concluded following a minor collision where no injuries were sustained;
- All pursuits were in the Canberra suburbs occurred on good quality bitumen roads. Two pursuits were conducted in wet conditions and all police vehicles and drivers were qualified to undertake the pursuit;
- Generally the pursuit-related documentation submitted was satisfactory;
- Of the six initial cases analysed (1-6), two revealed deficiencies in the communications between the pursuing police vehicles and ACT Policing Operations which can be addressed with training delivered to Response members. The remaining four pursuits did not document deficiencies;
- Of the remaining seven case studies (7-13), two pursuits were notable for their duration (Case Study 2 - PROMIS No. 5622803 and Case Study 6 – PROMIS No. 5647121). Lengthy pursuits show that where a fleeing driver has not stopped

after two minutes duration, they are not likely to stop at all which extends the exposure by all parties to the risk posed by the fleeing driver;

- The Police Pursuit Review Committee has recommended a specified duration of a pursuit as an additional critical point for re-assessment to better inform those tasked with justifying the pursuit;
- There is evidence to suggest high speeds attained by a fleeing driver were presenting undue risk to members of the community, the pursuing police and the driver/occupants of the vehicle of interest. An analysis of the seven Case Studies (Case Study 7 - PROMIS No. 5990229, Case Study 11 – PROMIS No. 5650226 and Case Study 13 – PROMIS No. 5656047) involved pursuits where the maximum speed reached was in excess of 180km/h. The speeds in each of these three pursuits was considered by the Police Pursuit Review Committee to have appreciably elevated risk when balanced against the value of apprehending the offenders, and therefore warranted termination earlier than was done;
- The Police Pursuit Review Committee considered limiting the speed attained by police vehicles engaged in a pursuit to a percentage of the applicable speed limit on the road where a pursuit was being conducted, for example 20 per cent. Further consideration was given to recommending a certain speed above a given limit, for example 20km/h;
- However, the Police Pursuit Review Committee was concerned setting limits in this fashion may be misconstrued to allow a pursuit to continue below these recommendations when true circumstances dictate it is not safe to do so; and
- The Police Pursuit Review Committee recommended that a speed threshold attained by pursuing police and the fleeing driver become an additional critical point for reassessment to better inform those tasked with justifying the pursuit.

3.3.3.9 Conclusions

Conclusions in this part include:

1. The Police Pursuit Review Committee identified a need to provide greater feedback to individual members:
 - The Police Pursuit Review Committee should notify the member drivers by email, advising their actions had been scrutinised and subsequently deemed compliant but also a reminder of the obligations in the AFP Guideline; and
 - The Police Pursuit Review Committee has since advised the Police Pursuit Review Committee Working Group Chair that individual emails have been developed and issued for each pursuit.
2. The Police Pursuit Review Committee identified a need for refresher training:
 - This training has been conducted on the Regional Training Days; and
 - At the request of Police Pursuit Review Committee, the AFP Chief Driving Instructor has been engaged to provide training to members in relation to practical and theoretical component of pursuits and urgent duty driving.
3. The Police Pursuit Review Committee identified the existing reporting regime lacks the capacity to record and consider the reason/s for the offending driver fleeing from

police. This is a lost opportunity to better understand the motivation for and rationale of drivers who flee from police, and data of this type will provide a greater appreciation and understanding of the issue and may assist in mitigating pursuits.

This consideration is supported by the Australian Institute of Criminology research that suggests: *'qualitative research involving persons who were the driver(s) of a vehicle being pursued would enhance understanding of why people choose to flee and assist in the development of strategies that discourage people from making such decisions'* (Lyneham, 2013).

- The Police Pursuit Review Committee has recommended the Pursuit Driver Debrief Report be amended so this data can be captured.

In addition, a review by the Victorian Coroner's Prevention Unit recommends that police collect data of this type to understand both pursuits generally, and the impact of any policy or legislative amendments (Coroner's Court of Victoria - Stage Two, 2014)(para. 34).

4. Supplementary analysis of eight case studies conducted in October 2014 showed traits not reflected in the analysis conducted in May 2014. It identified the existence of issues in terms of the understanding, adherence and effect of the AFP Guideline by members particularly in the context of the nature, speed and duration of pursuits.
5. The Police Pursuit Review Committee has implemented a trial of a modified pursuit policy including:
 - A [REDACTED] for the termination of a pursuit. Should the Pursuit Controller make a decision not to terminate a pursuit [REDACTED], the circumstances and rationale will be detailed in the Pursuit Controller's Report to the Police Pursuit Review Committee.
 - A [REDACTED] for the termination of a pursuit. Should the Pursuit Controller make a decision not to terminate [REDACTED], the circumstances and rationale will be detailed in the Pursuit Controller's Report to the Police Pursuit Review Committee.

Recommendation 1:

The Police Pursuit Review Committee maintains ongoing analysis and review of police pursuit statistics as part of its Terms of Reference.

Recommendation 2:

The Pursuit Driver Debrief Report be amended to ensure that all members capture (where practicable) the reason given by an offender for fleeing from police.

Recommendation 3:

A trial of modified safety parameters regarding [REDACTED] is to be assessed with a view to incorporation into the *AFP National Guideline: ACT Policing: Urgent Duty Driving and Pursuits*

3.3.4 Current AFP Governance Framework

The AFP Guideline is the leading control mechanism for pursuits involving ACT Policing members. Authorisation for the document sits with CPOACT. The AFP Guideline sets out the following in relation to pursuits:

- Responsibility for the control and coordination of pursuits rests with the Pursuit Controller (Team Leader, Police Operations);
- The Primary responsibility for the initiation and conduct of a pursuit rests with the member driving the police vehicle. That member will:
 - i. Drive in a manner that prioritises the safety of the police and public;
 - ii. Comply with any directions of the Pursuit Controller; and
 - iii. Subject to the AFP Guideline, comply with directions of a senior member.
- The Pursuit Controller may terminate a pursuit independent of the member driving the police vehicle, and thereby cause the member/s driving the police vehicle/s to terminate the pursuit immediately;
- The Pursuit Controller cannot direct a member to continue a pursuit against that member's decision to terminate.

Unlike the Queensland Police Service and Victoria Police policies, the AFP Guideline does not prescribe offence types or conditions for when a pursuit can or cannot be undertaken. The Queensland Police Service and Victoria Police policies explicitly restricts the circumstances in which an officer can pursue a fleeing driver and offences including licensing and vehicle compliance/registration matters, drivers fleeing from roadside impaired driver testing regimes and circumstances based on officer instinct.

Whilst the AFP Guideline does refer to the seriousness of the offence for which the pursuit is commenced as a trait to inform the decision to pursue a fleeing driver, it more heavily relies on risk assessment via an ongoing appreciation of risk posed as perceived by the police officer conducting the pursuit and (independently) the Pursuit Controller at Police Operations. The AFP philosophy gives primacy to community safety, and causes the reason or purpose of the pursuit to be a secondary consideration.

This risk mitigation philosophy of the AFP Guideline is best expressed in Part 24 of the AFP Guideline in relation to terminating a pursuit:

'Where the value of apprehending the offender in a pursuit is outweighed by any one or more of the...criteria, the member who is the driver of the vehicle involved in the pursuit will terminate'.

The criteria referenced in Part 24 upholds Part 21 of the AFP Guideline which requires an assessment and continual re-assessment of risk by taking into account factors which include:

- The real or potential danger to police, members of the public or people in the suspect vehicle;
- road and pedestrian traffic;
- weather and condition of road surface;

- seriousness of offence/matter;
- whether there are other means available for police to identify or apprehend the relevant people;
- the offender's identity is established to a point where later apprehension is likely and there is no immediate threat to public safety;
- the experience, competency and qualification of the (*police*) driver;
- the classification of the police vehicle re: suitability for the pursuit; and
- continuance of the pursuit would be futile in the circumstances.

The AFP Guideline also includes a reporting and a review regime post pursuit requiring:

- Driver/s of police vehicle/s
 - The completion of the Pursuit Driver Debrief Report; and
 - PROMIS case write-off.
- Pursuit Controller
 - The completion of the Pursuit Controller Debrief Report.
- Police Pursuit Review Committee
 - Findings of the review; and
 - Quarterly reporting to the CPOACT.

The AFP Guideline provides governance on cross-border pursuits and outlines the responsibilities of the Police Pursuit Review Committee generally.

3.3.4.1 Previous reviews

The Police Pursuit Review Committee Working Group noted previous assessments and reviews on the AFP Guideline and broader pursuit issues:

1. In 2007 an internal review was undertaken of the AFP Guideline, including a comparison to pursuit policies in other jurisdictions (Close, 2007). The review included a number of recommendations relating to amendments to the Guideline, but overall concluded that the Guideline was comprehensive, explicit and appropriate.
2. An independent review was commissioned by the ACT Attorney-General and conducted by Mr Alan Cameron. Released on 31 July 2007 it concluded that *'the internal AFP review was thoroughly and professionally conducted, and has correctly identified some issues which require attention'* (Cameron, 2007). On 16 August 2007 the then Acting CPOACT briefed the Executive Steering Committee on the review with the minutes reflecting the following:

The results of the Allan Cameron review of the ACTP pursuit review has been submitted to the Executive. Over all, Mr Cameron is happy with the pursuit review. (Executive Steering Committee Minutes, 2007).

3. A 2011 report prepared by the Australian Institute of Criminology noted that following a peak of 130 pursuits in 2007, the number of pursuits each year in the ACT had declined, with 73 recorded in 2011 representing a 44 per cent reduction (Lyneham, 2013).

4. In the last ten years, there have been six instances of death or serious injury relating to a police pursuit conducted by members of ACT Policing:
- i. In the case of the 2004 collision in Lyneham killing Benjamin Hayes who was fleeing from police in a stolen vehicle who were attempting to arrest him in relation to a ram-raid conducted immediately prior in Evatt.
 - ii. In the case of Clea Rose in 2005, the Coroner could not reach a clear finding on whether her death occurred prior to, or after the pursuit was commenced.
 - iii. In the case of the 2006 collision in Phillip killing Heather Freeman, police had been attempting to conduct a traffic stop on the vehicle prior to the collision however, a pursuit had not been commenced.
 - iv. In the case of the 2007 collision involving Christopher Miatke who was fleeing from police attempting to arrest him, sustaining head injuries and paralysis after crashing in Majura Avenue, Ainslie.
 - v. In the case of the 2010 quadruple fatality collision on Canberra Avenue, Fyshwick the pursuit was being conducted by NSW Police Force members and did not involve members of ACT Policing.
 - vi. In the case of the 2012 Canberra Hospital employee killed crossing Yamba Drive, Garran outside the hospital, whilst the offending driver was evading police, a pursuit had not been instigated.

3.3.4.2 ACT Legislative Assembly

In July 2011 ACT MLA Shane Rattenbury of the ACT Greens published a Discussion paper titled: *A community Discussion paper on police car chases* (MLA, 2011).

The paper proposed that a limited pursuit model be adopted and asserted that rarely were police pursuits connected with serious and violent crimes, and that in other jurisdictions including Tasmania where a policy of this type had been adopted there was not an escalation in crime and a reduction in crashes emanating from pursuits with no escalation in the prevalence of pursuits.

In 1992 the Tampa Police Department in Florida USA implemented a limited pursuit model policy prohibiting police officers from pursuing fleeing drivers except where a violent felony had been committed. In 1995 the Department amended the policy to permit the pursuit of fleeing drivers for all felony offences because of escalating crime and the effect was immediate causing car theft and property crimes to decline (Eisenberg, 2009).

The ACT Greens paper proposed a two-year trial amendment to the AFP Guideline to a limited pursuit model permitting police to pursue a fleeing driver when those attempts to evade apprehension were in connection with violent crimes.

On 8 May 2014 ACT MLA Shane Rattenbury moved a motion in the ACT Legislative Assembly referring an inquiry and review into police pursuits in the ACT to the Justice

and Community Safety Standing Committee. The Hansard transcript recorded Rattenbury MLA motion as:

That this Assembly:

(1) notes:

- (a) police pursuits policy remains a complicated issue that must balance enforcement of the criminal law with community safety;*
- (b) from 2000-2011, there has been an average of 15 crashes and 18 deaths each year related to police pursuits;*
- (c) several Australian jurisdictions have reviewed and altered their police pursuits policies in recent years; and*
- (d) technology to assist criminal investigations and mitigate the need for police pursuits continues to improve; and*

(2) refers to the Standing Committee on Justice and Community Safety for inquiry and report by the last sitting day in November 2014, the issue of police pursuits policy, including:

- (a) an examination of the most recent evidence and policies on police pursuits including from Australian and international jurisdictions;*
- (b) hearing evidence from relevant stakeholders such as police, members of the community and experts in appropriate academic fields;*
- (c) recommendations relating to police pursuits policy in the ACT; and*
- (d) any other relevant matter.*

The Minister for Police & Emergency Services, Simon Corbell MLA did not support the motion, providing support of ACT Policing's strong, robust framework and highlighting that:

ACT Policing's guidelines align with the Australia New Zealand police pursuit principles developed by the Australia New Zealand Police Advisory Agency, of which ACT Policing is a member. In many respects ACT Policing's definition of a pursuit exceeds that defined by the ANZPAA pursuit principles.

Furthermore, support was not provided by the Leader of the Opposition, Jeremy Hanson MLA stating:

We will not be supporting the referral to (the) committee. I am confident that the framework that the police have at the moment is the right balance.

The motion was resolved in the negative (Rattenbury, S, 2014).

3.3.4.3 Key Findings

A summary of findings derived by the Police Pursuit Review Committee Working Group with regard to the governance framework includes:

- The *AFP National Guideline: ACT Policing: Urgent Duty Driving and Pursuits* is a national governance instrument that was adopted from an ACT Policing Practical Guide in 2007 following the absence of an AFP National policy document.
- The existing Guideline remains an appropriate governance document that ensures the best protection for the driver fleeing from police, the police pursuing the fleeing driver, and the community.
- ACT Policing's governance around police pursuits has government confidence.
- The guideline should be periodically reviewed to ensure it remains best practice and is properly informed by the data and experiences of other jurisdictions.
- Periodic reviews of the Guideline should be overseen by the Police Pursuit Review Committee and ACT Policing Business Committee.

3.3.4.4 Conclusions

Conclusions in this part include:

1. The Police Pursuit Review Committee Working Group identified that the AFP Guideline is more relevant to ACT Policing than to the wider AFP.
2. The Police Pursuit Review Committee Working Group concluded that the AFP Guideline currently provides an appropriate level of protection to police and the community.
3. The Police Pursuit Review Committee Working Group identified that best practice is ever evolving and that there is an opportunity to periodically review the AFP Guideline to take into account changing operational practices and data and experiences from other jurisdictions.
4. Notwithstanding the findings of the Police Pursuit Review Committee Working Group in relation to the adequacy of the AFP Guideline, the Working Group suggested that periodic review of the AFP Guideline would achieve a number of important outcomes:
 - a national guideline that reflects the breadth and scope of AFP locations and which accommodates the unique requirements of each Australian jurisdiction and thereby effectively responds to policy needs of varying AFP portfolios; and
 - a guideline which adopts contemporary best practice.
5. A review of the AFP Guideline would allow AFP policy to align with emerging, contemporary policy, including that of the ANZPAA Police Pursuit Principles (ANZPAA).
6. Whilst police pursuits consistently draw significant attention from the community, police and governments, urgent duty driving does not receive the same level of attention and scrutiny. Even though policing draws a distinction between pursuits and urgent duty driving, there may be a public perception that they are one and the

same. As the two are inextricably linked, the Police Pursuit Review Committee Working Group concludes that urgent duty driving should remain as part of the review.

7. Ownership and control of the AFP Guideline currently rests with CPOACT. It is appropriate that this ownership remains with the CPOACT primarily due to ACT Policing having stakeholder primacy, but additionally ACT Policing has, and continues to develop subject-matter experts in relation to pursuits and urgent duty driving.
8. The Police Pursuit Review Committee Working Group recommended periodic reviews of the governance around urgent duty driving and police pursuits which could include:
 - an analysis of pursuit policies in other Australian policing jurisdiction including recent coroner's findings;
 - a review of activity by other police jurisdictions;
 - information derived from the pursuit trial; and
 - oversight of periodic reviews by the Police Pursuit Review Committee and the ACT Policing Business Committee.

Recommendation 4:

The existing *AFP National Guideline: ACT Policing: Urgent Duty Driving and Pursuits* remains an appropriate governance document that ensures the best protection for the driver fleeing from police, the police pursuing the fleeing driver, and the community, however the guideline should be periodically reviewed to ensure it remains best practice and is properly informed by the data and experiences of other jurisdictions. These periodic reviews should be overseen by the Police Pursuit Review Committee and ACT Policing Business Committee.

Recommendation 5:

A national AFP approach should be taken towards the development of a governance framework.

Recommendation 6:

ACT Policing should retain control of the *AFP National Guideline: ACT Policing: Urgent Duty Driving and Pursuits*, and ownership of the governance should remain with the Chief Police Officer for the ACT.

Part 8 of this review provides additional analysis of existing governance together with proposals and recommendations to reform AFP governance.

3.3.5 ACT Policing - Police Pursuit Review Committee

Part 27 of the AFP Guideline prescribes the role and responsibilities of the Police Pursuit Review Committee to:

- Review all police pursuits;
- Identify and treat any adverse issues or trends in response to breaches of the AFP Guideline and police driver behaviour generally;
- Exploit opportunities to elevate the adequacy of the driver training regime;
- Sanction an AFP member's driving authority;
- Cause remedial driver training and/or re-assessment of members; and
- Recommend amendments to the AFP Guideline.

Membership of the Police Pursuit Review Committee consists of the below substantive positions with a secretariat provided by the Chair's business area. The Police Pursuit Review Committee establishes a quorum with three members (not from the same portfolio):

- Superintendent Operations;
- Superintendent Traffic & Planning;
- Superintendent Judicial Operations;
- Superintendent South District;
- AFP Chief Driving Instructor; or
- ACT Policing Welfare Officer (where appropriate).

The Terms of Reference currently reflect the following:

- Police Pursuit Review Committee is chaired on an annual (rotating) basis by a nominated member of the Police Pursuit Review Committee;
- Police Pursuit Review Committee is required to meet quarterly and as soon as is practicable following a major incident; and
- Police Pursuit Review Committee reports quarterly to the DCPO-Response.

3.3.5.1 Police Pursuit Review Committee – 2014 Reforms

On 10 April 2014 Superintendent Traffic Operations & Planning reported concerns about the efficacy of the Police Pursuit Review Committee. The report identified:

- Delays in the scheduling of meetings;
- Four of the five Police Pursuit Review Committee members had never attended a Police Pursuit Review Committee meeting. It is understood that the reason was due to significant amount of movements at the Superintendent level; and
- The Police Pursuit Review Committee required reinvigoration.

Immediate reforms proposed by the reinvigoration of the Police Pursuit Review Committee included:

- Fortnightly Police Pursuit Review Committee meetings;
- A revised awareness training package to be developed and delivered by Traffic Operations members to ACT Policing members at Regional Training Days. The package was to focus on the philosophy of continual risk assessment and

appreciation in relation to pursuits and Urgent Duty Driving, with an emphasis on termination where the risk outweighs the purpose of the pursuit;

- A pursuit dashboard sticker be fitted to all police vehicles to depict the pursuit criteria; and
- All Police Pursuit Review Committee work including a précis of pursuits be recorded on a spreadsheet in SPOKES to be used as both a recording tool and a means to track and identify trends in order to better inform the content of Police Pursuit Review Committee quarterly reports to DCPO-Response.

3.3.5.2 Key Findings

A summary of findings of the Police Pursuit Review Committee Working Group about the Police Pursuit Review Committee framework included:

- The Police Pursuit Review Committee is a key governance mechanism that has responsibilities through the AFP Guideline;
- The Police Pursuit Review Committee provides a key function through the review of all pursuits in a timely manner;
- The Police Pursuit Review Committee has undergone reform during 2014 to ensure a functional approach; and
- The Police Pursuit Review Committee Working Group understands that it is the intention of the Police Pursuit Review Committee to maintain ongoing analysis and review of pursuit statistics over a longer period of time in order to identify trends and report the same via the Police Pursuit Review Committee Quarterly Reporting regime.

3.3.5.3 Conclusions

Conclusions in this part include:

1. The Police Pursuit Review Committee Working Group concluded the Police Pursuit Review Committee Chair should come from within the area holding ownership of the AFP Guideline.
2. The Police Pursuit Review Committee Working Group supports the decision for the Police Pursuit Review Committee to meet fortnightly and by exception in response to any incident the membership or ACT Policing Executive deems warrants convening the Police Pursuit Review Committee.
3. The Police Pursuit Review Committee Working Group identified that the Terms of Reference required refreshing to maintain currency.
4. The Police Pursuit Review Committee Working Group identified the need to enhance the authority of the committee by elevating the Chair to Commander Level. DCPO-Response should take on responsibilities and oversight of the Committee to best demonstrate to members the seriousness in which the ACT Policing Senior Executive regards pursuits.

5. The Police Pursuit Review Committee Working Group identified the need for the Police Pursuit Review Committee to be proactive about identifying training needs, individually and on a whole-of-ACT Policing basis.
6. The Police Pursuit Review Committee Working Group concluded that as part of the Regional Training Days, operational members (including operators from ACT Policing Operations) receive refresher training on the risks involved with urgent duty driving and pursuits including their obligation to terminate as required by the AFP Guideline;
 - To date, the delivery of training has been completed over six Regional Training Days commencing 7 July 2014 and concluding 11 August 2014 under the supervision of Superintendent Cartwright of the Police Pursuit Review Committee.

Recommendation 7:

The ACT Policing Executive should ensure the Police Pursuit Review Committee continues to meet its obligations under the *AFP National Guideline: ACT Policing: Urgent Duty Driving and Pursuits* and Terms of Reference to safeguard that reporting and accountability mechanisms continue to be met.

Recommendation 8:

The Police Pursuit Review Committee should continue to be chaired by a representative from the area holding ownership of the AFP National Guideline, namely the Deputy Chief Police Officer-Response.

Recommendation 9:

The Police Pursuit Review Committee should meet fortnightly and more often as necessary.

Recommendation 10:

The Police Pursuit Review Committee is to maintain ongoing analysis and review of pursuit statistics to identify trends and report via the Police Pursuit Review Committee Quarterly Reporting regime.

Recommendation 11:

In line with the key findings, the Terms of Reference for the Police Pursuit Review Committee should be amended. Terms of Reference for the Police Pursuit Review Committee have been drafted for approval.

3.3.6 Workplace Health and Safety compliance

The Police Pursuit Review Committee Working Group has identified that there is no direction in the *Workplace Health and Safety Act 2011 (Cth)* which specifically relates to police pursuits. However the Act does require both employers and employees to eliminate or minimise risk so far as is reasonably practicable, including the identification and mitigation of hazardous tasks in the work environment. The Police Pursuit Review Committee Working Group deems this obligation to include police pursuits.

The Act describes the requirement to remove or reduce identified risks through the conduct of a thorough risk assessment of hazardous tasks and to subsequently identify appropriate risk mitigation strategies. These strategies should include consultation with the Australia New Zealand Policing Advisory Agency to determine similar risk mitigation policies and procedures adopted in other police jurisdictions, the development of Standard Operating Procedures, the provision of adequate training to staff undertaking pursuits and the provision of comprehensive maintenance schedules for vehicles and equipment utilised during police pursuits.

3.3.6.1 Key Finding

A review of the AFP Guideline may lead to better compliance with the Work Health & Safety legislative obligations given the AFP Guideline (2007) pre-dates the Act (2011).

Recommendation 12:

A formal risk assessment of police pursuits in the ACT is to be conducted by the Police Pursuit Review Committee as part of the proposed review of the AFP governance framework.

3.4 Adequacy of Current Legislation to Sanction Offenders or Change Behaviours

3.4.1 ACT Policing prosecutions and court outcomes

An examination of pursuit data for 2013 and 2014 (to 30 May 2014) was undertaken with specific focus on prosecutions and court outcomes. The purpose of the analysis was to consider the adequacy of current legislative options in the ACT to sanction fleeing drivers in order to change behaviour.

3.4.1.1 Key Findings

A summary of findings derived by the Police Pursuit Working Group with regard to prosecutions and court outcomes includes;

- Prosecutions are being commenced for approximately 40 per cent of all pursuits. The majority of these prosecutions are triggered by an arrest and charge at the time of the offence. However, there are a number of occasions where an offender is either summonsed to appear in Court at a later date, or charged before court. This indicates that members are conducting thorough and successful follow-up inquiries to identify offenders.

- Where fleeing drivers are identified, members are generally selecting the correct offences and applying the most suitable charges. The offence of 'not stop vehicle if directed/signalled by police' under *s.109 Road Transport (Safety and Traffic Management) Regulation 2000* is the most commonly applied offence. The additional offence of 'furious, reckless or dangerous driving' is being utilised where driving conduct by the defendant subsequent to the failure to stop for police becomes unsafe.
 - On most occasions, offenders are charged with further substantive offences such as unlicensed/suspended driving, driving with alcohol in blood, and driving unregistered and/or stolen vehicle. Offenders are also being charged with offences such as wanted on First Instance Warrant or breach of bail.

Anecdotally this outcome provides some insight into the impetus or motive for the defendant failing to stop and instigating a pursuit. Offenders are making the decision to avoid apprehension and prosecution for these substantive offences. The criminality and risk of a defendant's conduct is therefore poorly addressed by the failing to stop for police offence provision which only provides a penalty of 20 penalty units.

- In the majority of pursuits, police listing the reason for the pursuit as 'fail to stop' does not provide the full picture as to why the offender is fleeing. This further supports the recommendation for ACT Policing to collect data on the reason/s given by an offender for fleeing police.
- Court outcomes appear to be adequate and in-line with available penalties. Noting however that on many occasions the pursuit-related offences are heard concurrently with other offences and an overall sentence is being recorded. This makes it difficult to determine the specific sentence being applied to a 'fail to stop' charge.
- Of the 57 offenders prosecuted in this period, eight were of Aboriginal and Torres Strait Islander descent and seven were juveniles. Nine of the offenders were confirmed as being alcohol impaired.

3.4.1.2 Conclusions

Conclusions in the part include:

1. The key findings suggest that the current prosecution and sanction options for pursuits in the ACT are being applied correctly by ACT Policing members.
2. Irrespective of this outcome, there remains a case to further strengthen the deterrence of pursuits in the ACT through legislative reform.

3.4.2 ACT Legislation pertaining to pursuits

Currently in the ACT, the offence of 'not stop vehicle if directed/signalled by police' per *s.109 Road Transport (Safety and Traffic Management) Regulation 2000* is the appropriate offence pertaining to a pursuit. The offence carries 20 penalty units (\$2,800). The Police Pursuit Review Committee Working Group submits the penalty is inadequate in terms of both responding to the criminality of the conduct (risk it poses to the community) and in deterring drivers from fleeing from police.

Policy and legislation surrounding pursuits both in the ACT and elsewhere should focus on risk mitigation including the termination of pursuits if there exists other means to identify the offending driver, a position supported by the Victorian Coroner (Coroner's Court of Victoria, 2014):

33. *The Review (Coroner's Prevention Unit – Victoria) could find no empirical evidence to support or refute the suggestion that a police preparedness to pursue fleeing vehicles. Deters drivers from fleeing police or otherwise engaging in unlawful behaviour involving motor vehicles.*

Recommendation 4:

That Victoria Police introduce a process to ensure all police members record and report all incidents of vehicles fleeing police, to improve the evidence base for development, evaluation and review of Victorian police pursuit policies that strike the optimum balance between law enforcement and public safety imperatives.

In this regard, police in the ACT rely on *s.60 Road Transport (General) Act 1999* which places an obligation on certain persons to identify the driver of a vehicle. Persons whom refuse or fail to identify a driver avoid automatic sentencing regimes including licence disqualifications and vehicle seizures whilst facing a relatively minor penalty of 20 penalty units (\$2,800).

These outcomes combine to effectively 'reward' a defendant who evades police and suggests that current legislation is inadequate.

In 2013 ACT Policing and the ACT Director of Public Prosecutions (ACT DPP) sought legislative reform which resulted in the *Road Transport Legislation Amendment Bill 2014* being debated in the ACT Legislative Assembly in May 2014. In June the amendments suggested by the Bill were enacted and created an additional offence provision for aggravated dangerous driving – *s.7A Road Transport (Safety and Traffic Management) Act 1999*. This provision went some way towards remedying the shortcomings of the legislation by elevating the penalty for a driver who while fleeing from police, drives in a dangerous, furious or reckless manner with a penalty of 200 penalty units (\$28,000), imprisonment for two years, or both.

A significant issue is that the provision fails to recognise the danger posed by failing to stop as adverse and unsafe conduct in itself. The main conclusion of research is that pursuits usually involve people who represent a high risk on the road under normal conditions and subsequently the risk posed by this class of road user was typically elevated with the addition of a pursuit (Hoffman, 2003).

The new 'aggravated' provision requires a person to drive in a manner that endangers the community while fleeing from police in order for it to be applied and does not therefore address the danger posed by a driver who initiates a pursuit.

The provision does not substantially strengthen the legislation to arguably deter, nor does it account for the risk rising from pursuits generally. In addition, the provision does nothing to mitigate the limitations of *s.60 Road Transport (General) Act 1999* in relation to the obligation of certain persons to identify the driver.

3.4.2.1 Other jurisdictional legislative options

Pursuit Related Offences

In 2009 NSW introduced a police pursuit offence provision (*s.51B Crimes Act 1900 - NSW*) commonly referred to as *Skye's Law* following a pursuit which resulted in the death of a 19 month-old baby – refer *Crimes Amendment (Police Pursuits) Act 2010*. The purpose of this provision was to:

- Create an indictable offence, as opposed to the existing summary offence;
- Raise the maximum penalty to three years imprisonment for the first offence, and five years imprisonment for a second offence, creating an alignment with existing Queensland and South Australian legislation;
- Enforce vehicle confiscations for those found guilty of engaging police in a pursuit;
- Mandatory licence disqualification for those engaging in a police pursuit; and
- Educate learner and provisional drivers about the tough penalties for such actions as part of getting their licences.

There is no specific pursuit-related offence in the ACT which mirrors the *NSW Crimes Act 1900* provision.

Impoundment and Forfeiture of Vehicles

A number of other jurisdictions have legislative provisions for the impoundment and forfeiture of vehicles used in a police evasion/pursuit related offence which are used to either complement those jurisdictions with 'restrictive' pursuit policies, or as an additional deterrence and punitive measure.

While there is strong data to suggest vehicle impoundment is an effective sanction to deter offenders from repeat traffic-related offences such as unlicensed driving or drink-driving, there is currently a data gap around how effective these provisions are in deterring pursuits. One reason for this may be that these provisions are usually introduced as part of a suite of measures, and cannot be measured in isolation.

It is recognised within Australia that the debate around pursuit policy would be greatly assisted by '*the evaluation of significant reforms to assess the impact of changes on pursuits, crime and the broader community*' (Lyneham, 2013).

Of interest, the NRMA invited comment on the potential use of vehicle sanctions to control repeat traffic offenders; 96 per cent of respondents indicated that vehicle impoundment would be an effective measure for controlling serial serious offenders, and 93 per cent responded that they would like to see vehicle impoundment as a sentencing option for cases where a disqualified driver re-offends during or after the period of disqualification (Barrett, 2007). Whilst these survey results are not directly related to pursuit sanctions, it demonstrates that there is a strong public appetite for impounding vehicles as a legislative deterrent option.

Driver Behaviour

Proposals in connection with legislative reform surrounding pursuits need to be considered more broadly than merely amendments to the *Road Transport Legislation*. Other provisions derived from the *Crimes Act 1900 (ACT)* and *Bail Act 1992 (ACT)* also

influence the behavioural models upon which deterrence theory, cognitive dissonance theory and risk homeostasis theory rely as applied in road safety and traffic law enforcement generally.

Recommendation 13:

To reduce the number of pursuits, mitigate the associated risks and hold fleeing drivers responsible and accountable, legislative reform is recommended at 13-1 to 13-23 inclusive.

Refer to Part 7 of this paper for proposed reforms.

3.5 Current and Emerging Technology

There are a number of current and emerging technologies that inform this review in terms of how technology can shape operational methodologies and tactical decisions pertaining to pursuits.

3.5.1 Automated Vehicle Locator

In March 2014 ACT Policing launched Automated Vehicle Locator (AVL) technology for all operational vehicles which provides the following capabilities relevant to pursuits:

- A representation of police vehicle/s on a large electronic map screen within Police Operations;
- The GPS used to show policing resources on the screen updates every 200 metres; and
- History of vehicle location and movement including vehicle speed.

This technology assists in two ways:

1. It provides the Duty Operations Manager and Pursuit Controller with greater oversight and visibility as a pursuit takes place with real-time information about the conduct of the pursuit and includes the availability and positioning of other policing resources, and
2. Provides an ability to reliably re-visit, scrutinise and report on pursuits.

3.5.2 Enterprise Mobility Solution project

There is no video-based live streaming platform deployed in ACT Policing vehicles. Traffic Operations vehicles are fitted with in-car cameras however, the images captured are recorded only and cannot presently be remotely viewed in real-time.

ACT Policing is currently sponsoring a business case through the AFP Strategic Investment Committee to progress the Enterprise Mobility Solution project. The overall aim of this project is to translate business requirements into technology requirements with a focus on mobile solutions.

This project may lead to the capability to live-stream vision from a police vehicle to the Pursuit Controller, an outcome which will enhance situational awareness and assist in the decision-making process regarding termination or continuance of a pursuit.

3.5.3 Emerging technologies

There are a number of emerging technologies being utilised or developed by other policing jurisdictions and business organisations across the world that may impact on police pursuit policies. These include:

- The ability to launch a GPS tracking device onto a vehicle being pursued (StarChase);
- The ability to remote disable the engine of a pursued vehicle (Donald Glanmor Howells, 2000);
- The ability to launch a vehicle immobilising device onto a vehicle, rendering it instantly immobile; and
- Vehicles which are “uncrashable” such as those being developed by the automotive industry.

These technologies may reduce the need to pursue offenders by allowing police to withdraw from the pursuit by disabling the target vehicle, and/or monitoring the target vehicle by other means. However, the use of this technology is not anticipated in the near to medium future.

4. JURISDICTIONAL REVIEW

4.1 ANZPAA Pursuit Principles

In 2013 Australia New Zealand Policing Advisory Agency (ANZPAA) published a set of *Police Pursuit Principles* to help guide Australian and New Zealand policing organisations in formulating pursuit related governance, but notes that *'every Australia New Zealand jurisdiction has its specific laws and police organisational policy and this chart does not take precedence over these'*.

AUSTRALIA AND NEW ZEALAND POLICE PURSUIT PRINCIPLES					
Every Australia New Zealand jurisdiction has its specific laws and police organisational policy and this chart does not take precedence over these.					
Key Themes	Authority	< - >	Safety	< - >	Risk
Key Statement	The authority for police to intercept vehicles and pursue drivers who fail to stop is derived from law. However, in the application of that authority safety is paramount.				
Definition	A pursuit is defined as a category of police driving undertaken in circumstances where for whatever reason, the driver of the vehicle being intercepted does not stop when called upon to do so.				
Key Principles	Policy	Training	Risk Assessment	Accountability	
Organisational Responsibility	Police organisations ensure that policies for initiating, undertaking and terminating pursuits are developed, implemented, communicated, managed and reviewed.	Police organisations provide police practitioners with skills and knowledge to enable them to respond to and manage the risks associated with police pursuits.	Police organisations ensure that a continuous assessment of risk is undertaken and communicated throughout pursuits. Police debrief pursuits to assess compliance with agency policies and effectiveness of the various police roles involved.	Police organisations will report, record, monitor, and evaluate police pursuits to continuously improve public and members' safety, and ensure police practitioners are adhering to organisational policy and procedures.	
Control and Supervision Responsibility	Pursuit controllers and supervisors are aware of and adhere to their organisation's pursuit policies and procedures.	Pursuit controllers and supervisors are trained and equipped by their police organisation to control and supervise a police pursuit.	Pursuit controllers and supervisors continually assess risk through the information provided to them and take action as appropriate which may include direction to terminate the pursuit.	Pursuit controllers and supervisors are accountable for their actions in controlling and supervising a police pursuit.	
Practitioner Responsibility	Individual police practitioners are aware of and adhere to their organisation's pursuit policies and procedures.	Individual police practitioners should not undertake a pursuit unless they have been trained and equipped by their organisation to enable them to respond to and manage the risks associated with a police pursuit.	Individual police practitioners should undertake a continuous assessment of risk throughout a pursuit. Where there is unacceptable risk the pursuit should be terminated.	Individual police practitioners are accountable and responsible for their actions in pursuing fleeing drivers.	

The key themes of this document are Authority, Safety and Risk. The four responsibilities listed for police are Policy, Training, Risks Assessment and Accountability. These governance traits inform this review.

4.2 Jurisdictional Comparison

A comparison of pursuit policies and legislative provisions across Australian jurisdictions reveals that there are some notable differences in how policing organisations choose to address the issue of pursuits.

The Australian Institute of Criminology (Lyneham, 2013) found that there is a current gap around jurisdictional information, noting that: *'...a comparative review of current pursuit policies in each jurisdiction and the evidence or experiences that have informed these policies'* would greatly assist the pursuit debate in Australia.

In the absence of a comprehensive comparative review, the Police Pursuit Review Committee will monitor the work of other jurisdictions under its remit of reforming the Guideline to review and measure the impact these different approaches have on the volume and outcome of police pursuits.

In preparation for this paper, ACT Policing sought pursuit-related policy from all Australian policing jurisdictions through ANZPAA and received input from Queensland Police Service and Tasmania Police.

4.2.1 Jurisdictional Review – New South Wales



NSW Police Force – Governance

The spirit and philosophy of the New South Wales Police Force *Safe Driving Policy* aligns considerably with that of the AFP and this outlook is reflected in coronial commentary (Dingwall, 2014)

The NSW policy is reportedly being reviewed following the NSW Deputy Coroner's findings in the death of Hamish Raj in 2011 (Dillon, 2014) and as a result was not made available.

NSW Pursuit Legislation

The following police pursuit-related legislation from NSW was considered;

Aggravated Dangerous Driving

The NSW Aggravated Dangerous Driving offence is found at *s.52A Crimes Act 1900*.

Unlike the ACT, the NSW Aggravated Dangerous Driving provision mirrors the NSW Dangerous Driving offence condition in that the penalty regime is influenced by the driving outcome in terms of fatalities and grievous bodily injury.

Like the ACT, the NSW Aggravated Dangerous Driving provision considers aggravating elements; unique and elevated risks to the community, thus the term 'aggravated'. These NSW elements include:

- the driver attained the prescribed concentration of alcohol;
- the driver travelled at in excess of 45km/h;
- the driver had engaged in a police pursuit; and
- the driver was driving under the influence of drug/s.

The NSW aggravating elements somewhat align with those of the ACT:

- the driver attained the prescribed concentration of alcohol;
- the driver was driving with a prescribed drug in their body;
- the driver was exceeding the speed limit by > 30 per cent;
- the driver had engaged in a police pursuit;
- the driver was driving under the influence of alcohol or drug to such an extent as not to have proper control of the vehicle;
- the driver directly placed at risk a vulnerable road user; and
- the driver had a passenger < 17 years of age in the vehicle.

Provision	NSW	Penalty	ACT	Penalty
Aggravated dangerous driving	s.52A CA 1900		s.7A RT (S&TM) Act 99	
Includes pursuits	Yes		Yes	
First Offence Provision			Yes – s.7	1yr / 100pu
Repeat Offence Provision.			Yes – s.7	2ys / 200pu
Cause Death Offence Provision	Yes	14yrs	No - s.6 Neg Drive	
Cause GBH Offence Provision	Yes	11yrs	No - s.6 Neg Drive	

Identifying the driver

The NSW police power and obligation provision for identifying a driver is found at s.177 *Road Transport Act 2013*.

The NSW provision mirrors the ACT statute in structure, language and penalty regime.

The NSW provision is not influenced by provisions similar to the *Crimes Act 1900 (ACT)* provisions arising from s.187 (*Part 1C*) and s.252G (*Children and Young People*).

The NSW provision has the same issues of jurisdictional nexus per *Part 7.6.1* of this report.

Provision	NSW	Penalty	ACT	Penalty
ID Driver	s.177 RT Act 2013	20pu	s.60 RT (Gen) Act 1999	20pu

4.2.2. Jurisdictional Review - Queensland



Queensland Police Service - Governance

The Queensland Police Service provided detail surrounding the governance of pursuits – the QPS Safe Driving Policy.

The Queensland Police Service Safe Driving Policy outlined in the Queensland Police Service Traffic Manual defines the circumstances when officers may pursue a fleeing driver and limits pursuits to when officers have a reasonable belief that an occupant of the vehicle:

- will create an imminent threat to life; or
 - has or may commit an act of unlawful homicide or attempt to murder; or
 - has issued threats to kill any person and has the apparent capacity to carry out the threat; or
 - has committed an indictable offence prior to an attempt by police to intercept the vehicle;
- and
- the imminent need to apprehend the person is considered justifiable given the risks of pursuing.
 - To remove any doubt, in every instance of the above points, the imminent need to apprehend the person must be considered justifiable by officers given the risks of pursuing.

Matters which officers are not permitted to pursue include:

- licence, vehicle or street checks;
- routine traffic interceptions where no other offence exists apart from failing to stop as directed;
- random breath tests;
- all simple offences (including traffic offences and evasion offences); and
- indictable offences based on officer instinct alone or suspicion only (without supporting evidence).

Queensland has a specific evasion offence that is committed when the driver of a motor vehicle fails to comply with a lawful direction to stop by an officer in a police vehicle as soon as reasonably practicable: *s.754 Queensland Police Powers and Responsibilities Act 2000*.

The evade police offence penalties include mandatory disqualification for holding or obtaining a driver licence and is categorised as a Type 1 vehicle impoundment offence.

- First Type 1 Offence: 90 day impoundment or immobilisation of vehicle.
- Repeat Type 1 offence: Impoundment subject to forfeiture within the relevant period (5 years).

The investigation of an evading police offence is strengthened by owner onus provisions (evasion offence notice is issued to the vehicle's owner and specified at s.755 and s.756 of the *Police Powers and Responsibilities Act 2000*).

4.2.3 Jurisdictional Review - Tasmania



Tasmania Police – Governance

The Tasmania Police provided detail surrounding the governance of pursuits.

The Tasmania Police policy provides that officers can only engage in a pursuit for emergencies involving obvious and immediate danger to human life, or in the response to or prevention of specific (serious) crimes.

4.2.4 Jurisdictional Review – Victoria



Victoria Police – Governance

An Inspectorate Review of pursuits was conducted by Victoria Police in 2011 and concluded the '*Victoria Police policy is adequate and compliance by police members is high*' (Victoria Police, 2012) pg.5.

In 2014 Victoria Police were asked to provide their governance of pursuits for this review however the Victoria Police policy was then the subject of an internal review arising from the findings and recommendations of a 2014 Coronial Inquiry (Coroner's Court of Victoria, 2014), and subsequently was not made available at that time.

In July 2015 upon the completion of the review by Victoria Police of their pursuit related governance, Victoria Police announced significant amendment to policy relating to pursuits (Victoria Police, 2015) and this outcome was then incorporated into this review, more broadly discussed in Part 5.3.

4.2.5 Other Jurisdictions

The AFP Guideline is difficult to compare to those of Tasmania Police, Victoria Police and Queensland Police Service because unlike those policies, the AFP governance does not limit pursuits to specific circumstances or offences, and thereby more closely aligns with governance of New South Wales, Western Australia, South Australia and the Northern Territory.

At Part 5.4 of this Review, the merits of a limited pursuit model are more broadly discussed.

Recommendation 14:

Through the Police Pursuit Review Committee, ACT Policing should continue to monitor and regularly report on the work of other jurisdictions to review and measure the impact that different approaches are having on the number and outcome of police pursuits. The review should inform any amendment made to the AFP National Guideline.

5. RECENT CORONIAL INQUEST OUTCOMES

5.1 Australian Capital Territory

5.1.1 Benjamin Peter HAYES

On 17 April 2004 members of ACT Policing driving an unmarked police vehicle were pursuing a stolen Ford Falcon sedan eastbound in Ginninderra Drive, Belconnen following the involvement of the vehicle in a burglary at the Evatt shopping centre (Lalor, 2004).

The driver of the Ford sedan, Benjamin Peter Hayes, aged almost 27 years of age, travelled at high speed to avoid apprehension, crossing through the intersection at Haydon Drive at 135km/h against a red coloured traffic signal. A marked police vehicle entered the pursuit and about 1.2km west of the intersection at Mouatt Street took over the primary role from the unmarked police vehicle.

The speed of the Ford sedan continued largely unabated to the end of Ginninderra Drive where it crossed Mouatt Street into Rigall Place against a red coloured traffic signal before colliding with a concrete bollard and rolling end over end a number of times. Benjamin Hayes was ejected approximately 25m from the vehicle as a result of not wearing a seat belt, and he suffered severe closed head, chest and abdominal injuries resulting in his death at the scene.

The incident was reported in the Canberra Times where Mr Terry O’Gorman, President of the Australian Council for Civil Liberties described police pursuits as ‘...a *serious national policing problem*’, and called for pursuits to be banned except in connection with matters which posed ‘*serious risk of violence to other people*’ (Cutrupi, 2004).

The Coroner, Grant Lalor reported this to be the third reported occasion where Benjamin Hayes had fled from police to avoid detection for other offences, and he had an extensive criminal history throughout several Australian jurisdictions largely in connection with his drug habit. Toxicology results portrayed one dozen substances which were adjudged to have caused significant impairment.

In December 2004 Coroner Lalor released his findings and determined the pursuit was conducted in accordance with the AFP Guideline, did not amount to a death in custody and that it was appropriate for police to have pursued in the circumstances.

5.1.2 Clea Kathleen ROSE

On Saturday 30 July 2005 members of ACT Policing driving an unmarked police vehicle were attempting to intercept a white coloured Holden Commodore sedan having sighted it driving in the car park located on London Circuit and Constitution Avenue, Canberra City East. Unknown to the police officers, the driver was a 14 year-old juvenile.

The Holden sedan turned onto London Circuit, travelling west towards Akuna Street when the occupants chose to flee from police having just broken into a number of vehicles in the car park in which they were sighted by police. The Holden sedan travelled at not less than 80km/h when between Akuna Street and Ainslie Avenue, the police officers

activated the emergency signals in an attempt to cause the vehicle to stop so that enquiries could be undertaken.

The driver of the Holden sedan travelled through a red traffic signal at the Pitts car park entrance before turning right into East Row and accelerating to approximately 90km/h.

Clea Kathleen Rose, aged 21 years was in the company of two friends when attempting to cross Mort Street (from west to east) near the intersection of Mort Street and Alinga Street when she was struck by the vehicle calculated to be travelling at 76km/h due to the driver having braked and skidded immediately prior to the collision.

At this time the following police officers had entered East Row and observed the tyre smoke created when the driver of the Holden sedan skidded proximate to the collision with Clea Rose. The officers then formed the opinion the driver of the Holden sedan was fleeing and commenced a pursuit, unaware of the collision and Clea Rose's injury.

The driver of the Holden sedan failed to stop and continued to travel north in Bunda Street towards Braddon. The Holden sedan was soon after located by the pursuing police in Braddon, abandoned.

In December 2007 Coroner K.M. Fryar found that Clea Rose died on 20 August 2005 as a result of an irreversible brain injury suffered in the collision. The cause of her injury and her death was that she was struck by the stolen vehicle being driven by the juvenile who was attempting to avoid police apprehension.

The Coroner identified that a pursuit had not commenced when the Clea Rose was struck by the stolen vehicle, and the collision had not been sighted by those police officers attempting to intercept it because they had been delayed by traffic signals prior to entering East Row.

Coroner Fryar found that *"...the pursuit by the police did not contribute to the cause of Ms Rose's death"* (Fryar, 2007). The Coroner did not make any formal recommendations about the AFP Guideline, noting that it would be beyond the purview of the coronial inquest.

The only comment the Coroner made in relation to the conduct of the pursuit surrounded the position of the Police Pursuit Controller, finding that it would be *'sensible that a system be in place that provides for a deputy or backup Pursuit Controller for such occasions (the pursuit controller being unavailable due to other duties)'*. This recommendation was implemented by ACT Policing with the creation of the Duty Operations Manager position within the Police Operations portfolio in company with the existing Police Operations Sergeant/Shift Supervisor.

The Coroner reported the Commonwealth Ombudsman had written to her citing *'issues of public interest that could be explored'* (pg.11) including the adequacy of, and compliance with the AFP Guideline. The Coroner submitted that she was not legally authorised or capable *'to inquire into the surrounding circumstances of the pursuit, let alone the public policy that relates to the AFP Pursuit Guidelines, except to the limited extent of determining what, as a question of fact, actually occurred on 30 July 2005'* (pg. 12).

Having been deemed a critical incident, the ACT Policing investigation of the collision was overseen by AFP Professional Standards, reporting to the Commonwealth Ombudsman, The AFP Guideline was deemed adequate, and the actions of the police officers were deemed to have been compliant with the AFP Guideline.

5.1.3 Heather Jean FREEMAN

On Tuesday 14 November 2006 members of ACT Policing driving in an unmarked police vehicle attempted to stop a gold coloured Mitsubishi Magna sedan on Hindmarsh Drive, Phillip ACT.

The driver of the gold coloured Mitsubishi, Amber Jane Westin, aged 21 years failed to stop and turned left onto Callam Street. The vehicle stopped behind another vehicle in a slip lane for several seconds with the police positioned immediately vehicle behind with lights and sirens activated. It appeared to the police officers that Amber Westin was oblivious to, or ignoring the presence of police and their attempts to cause her to stop.

Amber Westin continued north on Callam Street, reaching a speed between 60km/h and 80km/h before entering the intersection at Neptune Street against a red coloured traffic light when she collided with the driver side of a white coloured Mitsubishi sedan which had been travelling east on Neptune Street and had entered the intersection on a green traffic light.

The driver of the white coloured Mitsubishi sedan was Heather Jean Freeman, aged 82 years.

The collision caused Heather Freeman to lose control of her vehicle and travel in the direction of the front entrance of the Woden Police Station before colliding with and coming to rest against a large steel sign preventing her vehicle from entering the police station.

Heather Freeman was pronounced deceased at the scene, and her husband and passenger Bert Freeman, aged 87 years was admitted to the Canberra Hospital suffering fractured ribs and soft tissue injury. Amber Westin was also admitted to the Canberra Hospital suffering a knee injury and facial abrasions.

On 21 January 2008 Chief Coroner Cahill dispensed with a Coronial Hearing citing the cause of Heather Freeman's death was sufficiently disclosed in the Magistrate's Court hearing of the charges against Amber Westin.

Having been deemed a critical incident, the ACT Policing investigation of the collision was overseen by AFP Professional Standards, reporting to the Commonwealth Ombudsman, The AFP Guideline was deemed adequate, and the actions of the police officers were deemed to have been compliant with the AFP Guideline.

5.1.4 Brody and Scott OPPELAAR, Samantha FORD & Justin WILLIAMS

On 20 March 2010 a collision occurred between two motor vehicles on Canberra Avenue, Fyshwick adjacent to the Monaro Highway overpass. Killed at the collision scene were Brody Lee Oppelaar, aged 3 months, his mother Ms Samantha Leanne Ford, aged 29 years and his father and driver Mr Scott Raymond Oppelaar, aged 33 years. The driver of

the second vehicle was Justin Karl Williams, aged 23 years who died as a result of his injuries at the Canberra Hospital. Ms Skye Maree Webb was a passenger in the vehicle Driven by Mr Williams who suffered significant injuries.

The collision occurred because the vehicle driven by Justin Williams was fleeing from police (a NSW Police Force patrol vehicle from the Queanbeyan Police Station), when it entered the intersection at Canberra Avenue and Monaro Highway at high speed against a red traffic signal where it collided with the second vehicle being driven by Mr Oppelaar. The pursuit emanated from Queanbeyan and had crossed into the ACT via the Canberra Avenue border. The driver of the pursuing police vehicle had begun to terminate the pursuit immediately prior to the fleeing driver entering the intersection where the collision occurred.

A post-mortem examination found Justin Williams had a blood alcohol concentration of 0.154 grams of ethyl alcohol per 100 millilitres of blood and expert evidence accepted by the Coroner (Dingwall, 2014) portrayed his ability to have proper control of a motor vehicle to have been '*seriously degraded to the point of non-existence*' (pg.7).

In March 2011 a coronial inquest was held in the ACT and in March 2014 Coroner P.G. Dingwall found that Justin Williams, Samantha Ford, Scott Oppelaar and Brody Oppelaar died from injuries sustained when the two motor vehicles in which they were travelling collided. The motor vehicles collided following a pursuit of the stolen vehicle driven by Justin Williams by members of NSW Police Force, who had crossed into the ACT.

Coroner Dingwall concluded that although Williams was driving the vehicle at incredibly excessive speeds to evade apprehension by police, he was satisfied that no criticism could be made of those officers. Further, he stated he was not satisfied that the pursuit should have been terminated at any time earlier than when the NSW Police Force Constable decided to terminate. By this stage, the termination of the pursuit would not have altered the ultimate result.

The Coroner made the following recommendations (Dingwall, 2014):

- 1. A training package be prepared and delivered to NSW Police Force who are special members of the AFP dealing with cross border pursuits and compliance with the AFP National Guideline: ACT Policing Urgent duty driving and pursuits;*
- 2. A training package be prepared and delivered to ACT-based AFP members who are special members of NSW Police Force dealing with cross border pursuits and compliance with the NSW Police Force Safe Driving Policy; and*
- 3. That consideration is given to making it mandatory that all makes and models of motor vehicle in Australia which are considered to be likely targets of theft have an immobiliser or similar device installed.*

The first two recommendations had been jointly implemented by the AFP and NSW Police Force prior to them being made. The final recommendation is outside of the remit of policing organisations, however, the Commonwealth Government initiated a program, which has identified these vehicles and sponsored the installation of anti-theft devices.

In addition, the Coroner reported the collision was subject to '*...a very thorough and intense investigation carried out on my behalf by members of the Australian Federal Police ... Members of the New South Wales Police Force also carried out an investigation on behalf of the Commissioner of the New South Wales Police Force. Both groups of investigators cooperated fully and there was a free exchange of information and results of the two investigations*' (pg.1), and '*The investigation was very thorough and was impressive for its depth and breadth*' (pg. 9)'.

The pursuing New South Wales Force police officers were special members of the AFP and as a result the AFP Guideline applied to the conduct of the pursuit upon entering the ACT. Accordingly, the investigation of the crash was undertaken by ACT Policing on behalf of the ACT Coroner.

In addition, AFP Professional Standards and the New South Wales Police Force Critical Incident Investigation Team assessed the compliance with both jurisdictions' governance and their reports were provided to the ACT Coroner. The AFP Guideline was deemed by AFP Professional Standards to be adequate, and the actions of the police officers were deemed to have been compliant with the AFP Guideline in the circumstances. Conversely, the New South Wales Police Force Critical Incident Investigation Team determined the conduct of the pursuit was not entirely in accordance with the Safe Driving Policy of the New South Wales Police Force.

5.1.5 Linda COX

On Thursday 3 May 2012, Canberra Hospital employees Linda Cox, 38 years and Ashlee Bumpus, 25 years were crossing Yamba Drive at the intersection of Bateson Road (outside the Canberra Hospital), when they were struck by a stolen motor vehicle travelling about 118km/h through a red traffic light. Linda Cox was killed instantly, and Ashlee Bumpus suffered serious leg injuries.

The driver of the stolen vehicle, Justin Monfries, 24 years attempted to flee the collision scene in the stolen vehicle before colliding with a nearby stationary vehicle rendering the vehicle he was driving immobile. Justin Monfries then fled the second collision scene on foot before being arrested within the Canberra Hospital precinct by both police officers and members of the public.

A subsequent blood analysis of Justin Monfries revealed a blood alcohol level of 0.99 grams of alcohol per 100ml blood, and the presence of tetrahydrocannabinol (THC) of 2ng/ml.

The vehicle driven by Justin Monfries had been stolen by him earlier that date in Manuka ACT, and immediately prior to the fatal collision on Yamba Drive, he had been involved in a two vehicle collision at the intersection of Webster Street and Groom Street in Hughes, whereupon he left the scene without stopping and soon after stole a quantity of petrol from a garage in Hughes.

The stolen vehicle driven by Justin Monfries was sighted by police officers travelling in an opposite direction to them in Wisdom Street, Hughes. The police officers activated the emergency lights and siren in order to attempt to intercept the stolen vehicle however quickly chose not to do so citing the traffic density and distance between them to make any attempt to pursue unsafe and futile.

On 9 August 2013 Coroner Dingwall dispensed with a Coronial Hearing citing the cause of Linda Cox's death was sufficiently disclosed in the Supreme Court hearing of the charges against Justin Monfries and in addition there was no public safety issues found to arise.

Having been deemed a critical incident, the ACT Policing investigation of the collision was overseen by AFP Professional Standards, reporting to the Commonwealth Ombudsman, The AFP Guideline was deemed adequate, and the actions of the police officers were deemed to have been compliant with the AFP Guideline.

5.2 New South Wales

5.2.1 Hamish RAJ

On 7 April 2014 NSW Deputy State Coroner Hugh Dillon released the findings of his inquest into the death of Hamish Raj. The Deputy State Coroner found that Hamish Raj died on 10 December 2011 as a result of multiple injuries he received in a head-on collision between his motorcycle and a car in Kogarah during a high-speed police pursuit.

Hamish Raj was being pursued by a single police vehicle after failing to stop. A Leading Senior Constable had identified him speeding in a 60km/h zone and intended to stop him for a roadside breath test and to speak with him about his speed. The member eventually lost sight of Hamish Raj, and shortly after two further police vehicles commenced pursuing him, although neither driver knew why they were pursuing.

Hamish Raj was found to have a blood alcohol reading of 0.040 and had cannabis in his system.

The Deputy State Coroner was particularly critical of NSW Police Force, stating that their report to the Coroner as part of the inquest showed an '*overemphasis (on) law enforcement to the detriment of public safety*' (Dillon, 2014). He was also critical of the officers involved, finding that none of them '*appeared to have given any serious consideration to the risk to their target*'. Of note, the Deputy State Coroner was particularly complimentary of the limited pursuit policy in Queensland.

The Deputy State Coroner recommended that the NSW Police Force Safe Driving Policy (SDP) in respect of police pursuits be reviewed by a panel of independent experts with a view to establishing best practice and provided more than 30 considerations to be adopted should the SDP be reviewed (pg. 2-4).

5.2.2 Syke SASSINE

On 15 May 2015 NSW Deputy State Coroner Paul MacMahon released the findings of his inquest into the death of Skye Sassine, aged 19 months (Coroner, 2015). The Deputy Coroner found that Skye Sassine died on 31 December 2009 as a result of injuries sustained in a rear-end collision at Ingleburn NSW between her parent's vehicle and a vehicle being driven by William Ngati who was at that time attempting to evade police and the subject of a high-speed police pursuit.

William Ngati was being pursued in relation to an armed robbery by a police vehicle after failing to stop for police in Revesby. Two NSW Police Force Highway Patrol vehicles were nearby and soon after those members took over the pursuit from the initial unit. The pursuit was supported by a police helicopter unit.

The pursuit concluded when the vehicle driven by William Ngati collided with the rear of a vehicle being driven by Skye Sassine's mother on the F5 Freeway near the St. Andrews Road overpass. Skye Sassine was a rear seat passenger in the vehicle and sustained significant injuries causing her to be conveyed to Liverpool Hospital where she died soon after arrival.

The Deputy State Coroner highlighted the evidence regarding the unsafe driving behaviour of the pursuing police officers who were driving police vehicles BK226 and BK229 (pg 15-16). A précis of the comments made by the Deputy State Coroner includes:

- The behaviour of William Ngati whilst fleeing from police brought about the collision that resulted in Skye Sassine's death (pg 11).
- Skye Sassine's death 'occurred during a police operation rather than as a result of a police operation' (pg 11).
- Skye Sassine's death may not have occurred had the pursuit not been commenced or had it been terminated (pg 11).

The Deputy State Coroner made the following recommendations to the Commissioner of the NSW Police Force regarding amendments to the NSW Police Force Safe Driving Policy (SDP) (pg 2-3):

3. *Provide that where a death occurs during the course of, or following a police pursuit, the driving of the officer(s) in the pursuing vehicle(s) during the pursuit itself, and any preceding period of urgent duty or catch up, be reviewed by a Safe Driving Panel to assess the compliance of the driver(s) with the SDP.*
4. *That a Safe Driving Panel, having assessed the driving of an officer(s) in such circumstances, prepare a written statement of the matters considered, the conclusions it has reached and the reasons for any recommendation it has made.*
5. *Such statement of conclusions, recommendations and reasons be retained in the records of the Safe Driving Panel and a copy provided to the officer the subject of the review.*
6. *That the role of the Police Aviation Support Branch (PASB) in circumstances of urgent duty driving or pursuit be reviewed in order to clarify such a role so as to ensure that such a role can be reasonably undertaken having regard to the capacity of available technology and resources.*
7. *Having clarified the role of PASB officers in circumstances of urgent duty driving or pursuit, appropriate training should be provided to members of the PASB and*

other police officers likely to be involved in such situations such as communications operators, VKG Supervisors and Duty Operations Inspectors.

In response to the death of Skye Sassine and the perceived inadequacies of penalty provisions which existed, in 2010 the NSW Government introduced 'Skye's law', a new provision at *s.51B Crimes Act 1900 (NSW)* which provided stronger penalties for drivers who attempt to evade arrest by fleeing from police with up to three years imprisonment and up to five years imprisonment for repeat offenders.

5.3 Victoria

5.3.1 Sarah Louise BOOTH

On 14 July 2014 Victorian Coroner John Olle released the two-stage findings of his inquest into the death of Sarah Louise Booth:

Stage 1: Inquest findings dealing with the facts and circumstances surrounding Sarah Booth's death and the statutory requirements under section *s.67 Coroners Act 2008 (VIC)* (Coroner's Court of Victoria - Stage One, 2014).

Stage 2: Inquest findings dealing with the prevention focus of the Coroner's investigation into Sarah Booth's death (Coroner's Court of Victoria - Stage Two, 2014).

The Coroner found that Sarah Booth, aged 17 years, died on 31 December 2006 as a result of injuries sustained in a single motor vehicle collision at Carrum Downs. Sarah Booth was a passenger in a vehicle being driven by Nathan Unwin when it was being pursued by police whereupon the driver lost control of the vehicle and collided with a tree located adjacent to the roadway. The Coroner found that Nathan Unwin was at that time of the collision under the influence of methamphetamine and amphetamines when attempting to evade police and that he was the subject of a high-speed police pursuit.

In Stage One of the inquest, the Coroner considered the (then) *Victoria Police Manual Instruction 102-3* titled '*Urgent duty driving and pursuits*' which provided members of the Victoria Police with governance regarding the conduct of pursuits (pg. 9) and which made the following 'overarching statement with respect to police pursuits':

44. ...A police member's duty to protect life and property will always have primacy over the need to arrest offenders, especially when the offence involved is relatively minor, or where there are safer options other than immediate arrest.

The Coroner found that whilst the Victoria Police governance provided its members with an assessment tool used to appreciate the real or potential risk, it did not instruct members on how to use the instrument, nor did it provide a weight to the elements provided by the tool. Further findings of the Coroner included the actual risk appreciation conducted by police officers was not reliable because it was capriciously used when commencing pursuits, and officers typically did not consider the real or potential risk posed by the fleeing driver especially when deciding to commence a pursuit.

In Stage Two of the inquest, the Coroner provided the background to which the second stage of the inquest was held: 10 deaths in Victoria arising from police pursuits including six of those deaths occurring between December 2011 and January 2012 including the death of Sarah Booth.

The Coroner also considered the inquest findings into the deaths of four other people, and in summary he determined that the inherent risk of pursuing fleeing drivers is only justified in circumstances where the fleeing driver is suspected of a serious offence (pg.9).

The Coroner's recommendations subsequently included:

- Police should never pursue a vehicle simply because it is fleeing, and that a pursuit should only be undertaken where police hold a pre-existing belief on reasonable grounds that intercepting the vehicle is necessary:
 - to prevent a serious risk to public health and safety; or
 - in response to a serious criminal offence that has been committed, or is about to be committed, which involved serious harm to a person or persons.
- The Victoria Police risk assessment model for pursuits should be redeveloped and an alternative more appropriate model be adopted.

On 13 July 2015 the Victoria Police announced the finalisation of an internal review of pursuit governance arising from the Coroner's report, and that the Victoria Police policy had been amended to reflect the findings and recommendations of the Coroner (Victoria Police, 2015):

Under the new Victoria Police Pursuit Policy, members must thoroughly plan vehicle intercepts and consider all available alternatives to an immediate apprehension, should the driver of a vehicle fail to stop when directed to do so.

The policy requires:

Members must not initiate or continue a pursuit unless they believe that:

- *there is an urgent need to apprehend the vehicle occupant/s because:*
 - *it is necessary to prevent a serious risk to public health and safety; or*
 - *a criminal offence has been committed, or is about to be committed, which involves serious injury to a person, and*
- *alternative means for apprehending the vehicle occupant/s are not feasible; and*
- *the overall harm they are seeking to prevent is greater than the risks involved in conducting the pursuit.*

The policy also states that in ordinary circumstances, a pursuit must not be initiated for any property-related or minor traffic offences.

5.4 Coronial Outcomes – Limited Pursuit Policy Model

Interstate derived coronial findings and academic commentary, question the ability for police officers to properly interpret and apply a risk appreciation based pursuit policy model (Coroner's Court of Victoria, 2014) and (Palmer, 2003). These proponents assert the adoption of a limited pursuit policy model to provide a more reliable and therefore appropriate mechanism for assessing risk.

Limited pursuit models typically issue a hierarchy of offending that provides justification to pursue, or not to pursue fleeing drivers in order to highlight the risks posed by pursuits are consistent and proportionate to the offence/s for which police are attempting to apprehend the fleeing driver.

This position is most often reliable, but it fails to recognise that the motivation for a driver to flee from police is not known to, or immediately apparent to the pursuing police at the time.

A pertinent example of this outcome is the arrest of Lindsay Hoani Beckett and Leslie Alfred Camilleri in October 1997 for the rape and murder of Bega school girls Lauren Barry and Nichole Collins. ACT Policing members attempted to intercept a vehicle for traffic offences in Holder ACT and a short pursuit ensued – PROMIS Case No. 91779 refers. The vehicle was abandoned by the occupants and evidence located within the vehicle gave rise to suspicion of the involvement by Beckett where after he and Camilleri were soon after arrested, charged, extradited and later convicted of the murders (R v Camilleri, 2001).

This outcome was observed by Professor Paul Mazerolle, Director Key Centre for Ethics, Law and Justice at Griffith University in Queensland who stated following the deaths of Brody Oppelaar, Scott Oppelaar, Samantha Ford and Justin Williams in 2010 (Kerin, 2010):

There are good reasons and appropriate reasons to pursue, and there's times when police officers shouldn't pursue. It's that continual reassessment.

A blanket statement that police should always pursue or police should not pursue, I think, is inappropriate.

Notwithstanding, Coronial Inquests and collision investigations (oversighted by both AFP Professional Standards and the Commonwealth Ombudsman) and the ongoing review and analysis conducted by the ACT Policing Pursuit Review Committee have all found the philosophy of the AFP Guideline to focus upon risk appreciation and mitigation to be adequate, appropriate and well observed. To this extent the model reflected by the AFP Guideline may be a reliable mechanism that prioritises public safety while also allowing police to uphold the law (Barnes, 2010) and (Walshe, 2012).

Conversely, the Victorian Coroner found that the risk assessment undertaken by pursuing police officers was most often unreliable especially when deciding to commence a pursuit (Coroner's Court of Victoria - Stage Two, 2014). The Victoria Police limited pursuit model which emanated from that Coronial Inquiry appreciably dealt with the issue by permitting

police to pursue under an unambiguous risk appreciation model adopted in circumstances where there is an urgent need to apprehend the vehicle occupant/s because:

- it is necessary to prevent a serious risk to public health and safety; or
- a criminal offence has been committed, or is about to be committed, which involves serious injury to a person; and
- alternative means for apprehending the vehicle occupant/s are not feasible; and
- the overall harm they are seeking to prevent is greater than the risks involved in conducting the pursuit.

When considering the reliability of a policy which is permissive of pursuits against one that limits or restricts pursuits, it is appropriate to reflect on the need for police officers to protect the community from persons who wish to harm it:

Criminals make unsound choices at a moment's notice and cops need to react. Sometimes there is no right answer. Sometimes it is simply trying to limit the carnage of what ultimately will be a tragic ending. Bad people do bad things, and we in law enforcement sometimes cannot stop them from having terrible results (Braziel. R, 2015).

In this regard the Victoria Police limited pursuit model is favoured over those of Tasmania and Queensland because it authorises pursuits in relation to an immediate or ongoing risk to life where the risks posed to the community by a pursuit are less than the purpose for apprehending the fleeing vehicle occupant/s. The Victorian policy does not rely on pursuing police being acutely aware of a given offence provision and/or sentence provision for an offence suspected to have been committed by an occupant of the fleeing vehicle in order to commence a pursuit and in this regard is more reliable in an operational context.

5.4.1 Conclusion

An examination of both pursuit policies (Part 4) and coronial findings from other Australian jurisdictions identifies the common and complex issue of attempting to balance the risks posed to the community by pursuing fleeing drivers against the requirement of police to enforce the law.

Notwithstanding many of the recommendations emanating from coronial inquests already being entrenched in the AFP Guideline, the Police Pursuit Review Committee Working Group is of the opinion that the issues raised by coroners provide a thorough and sound basis for inclusion in any review of the AFP Guideline. The coronial findings are important because the over-arching philosophy and aspiration of emerging limited pursuit policies provide a reliable argument for their consideration when underpinned by supportive legislative reforms.

Recommendation 15:

Relevant outcomes from Coronial Inquiries should inform the review of the AFP National Guideline.

6. STAKEHOLDERS & INTEREST GROUPS

6.1 Key Government Stakeholders

6.1.1 ACT Justice and Community Safety Directorate

A range of legislative reforms have already been recommended to JaCS.

JaCS is broadly aware of ACT Policing's proposal for legislative reforms to deter fleeing drivers, and ACT Policing will continue to work with the Directorate to implement the legislative reform recommended by this review.

6.1.2 ACT Director of Public Prosecutions

The ACT DPP was provided with an opportunity to consider this review, and advised that it appeared comprehensive.

Further, the ACT DPP regretted not being in a position to undertake a comprehensive analysis of the proposals, however did not oppose the recommendations, noting they are primarily directed to the issue of police procedures and powers and therefore not matters about which the ACT DPP had any particular policy position.

The ACT DPP anticipates the opportunity to provide detailed comment to the recommendations which pertain to criminal law reform if/once they are considered by Government.

6.1.3 ACT Policing Coroner's Officer

The ACT Policing Coroner's Officer was asked to provide provided with an opportunity to consider this review on behalf of the ACT Coroner. The Coroner's Officer is not aware of any specific concerns held by the Coroner, and had nothing to add to this review further than the last two Coronial Inquest findings summarised in this paper.

6.2 Community Stakeholders

6.2.1 The Rose Family

On 1 May 2014 two members of the Police Pursuit Review Committee Working Group met with Ross Dunn and Frances Rose, the parents of Clea Rose to discuss their views on police pursuits from the perspective of a family who has suffered a tragedy in connection with a police pursuit. Mr Dunn and Ms Rose made a point of conveying their desire and willingness to work with police in an effort to educate officers on the risks involved in the decision to pursue a fleeing driver, and the consequences for all participants, as well as the general public, when something goes wrong.

The Review Committee would like to thank Mr Dunn and Ms Rose for their thoughtful and candid contribution to this review and their ongoing work with ACT Policing to reduce road trauma.

Having considered the Terms of Reference for this review, Mr Dunn and Ms Rose have offered the following commentary:

- *They are not campaigning to stop all police pursuits but reinforced that the risk posed must be balanced in relation to the public, police and the offender. They acknowledge there could be a public backlash if police did not perform any pursuits.*
- *The risks related to police pursuits are rarely justified based on the seriousness of suspected offences. Mr Dunn raised the hypothetical scenario of whether a police officer, in assessing risk, would engage in a pursuit if they knew that one of their family members was ahead, on the same road at the time.*
- *Police officers do not employ coercive methods to stop pursuits, as they are dangerous to police, suspected offenders and the public. A direction to a driver to stop needs to be supported with more coercive sanctions than it has now.*
- *Ideally, whenever police directed a vehicle to stop, it would stop promptly. There would be no need for police to pursue. To get closer to this ideal situation we need at least stronger punitive measures for people who refuse to stop, and technology that would do some or all of the following:*
 - *immobilise, disable, mark or track a fleeing vehicle; and*
 - *identify and record the vehicle and its occupants.*
- *It is futile and dangerous to continue pursuing a vehicle that has indicated it is not going to stop. Except where there is a clear and present danger to the public it should be mandatory to terminate a pursuit once a vehicle has shown a clear intention not to stop.*
- *There should be a significant increase in penalties for failure to stop. There should also be a vehicle confiscation power attached to pursuits, such as the current power to impound a vehicle for burnouts, as pursuits are far more dangerous to the public than burnouts.*
- *Police should take pro-active steps to update technology and change pursuit practices as current police policies and technology are inadequate for the safety of all involved, including the general public.*

6.3 Interest Groups

6.3.1 The Law Society of New South Wales

In 2010 Mary Macken, President of the Law Society of New South Wales wrote to the NSW Minister for Police in response to the *Crimes Amendment (Police Pursuits) Bill 2010* advocating on behalf of the Law Society's Criminal Law Committee and Juvenile Justice Committee arguing the (then) proposed penalties were excessive and disproportionate (The Law Society of New South Wales, 2010).

The NSW Law Society submitted to the Government to *'put resources into further police education to increase awareness of the police pursuit policy, and to enable regular reviews as to the adequacy and implementation of the policy'*.

6.3.2 Criminal Lawyers Association Northern Territory

In 2012 Russell Goldflam, President of the Criminal Lawyers Association Northern Territory published a paper which called upon the Northern Territory to adopt a *'limited police pursuit policy'* similar to that of Tasmania, Queensland and most recently Victoria (Goldflam, 2012).

6.3.3 Alternative Law Journal

In 2003 Darren Palmer of the Deakin University published an article which spoke of the moral hazard created by police pursuits when attempting to strictly uphold the law when such conduct increases the risk to other parties (Palmer, 2003). He asserts pursuits are *'not in the public interest except under very tightly defined circumstances'* and *'mere tinkering with policy will do little to protect human life'*.

6.3.4 John Cadogan

On 17 October 2010 John Cadogan, a journalist, consumer protection advocate and automotive industry commentator published an article titled *Don't get in the way of police pursuits* (Cadogan, 2010)

The article specifically discusses the deaths of Clea Rose in 2005 and Brody Oppelaar, Scott Oppelaar, Samantha Ford and Justin Williams in 2010 and the vexed issue of the need for police to protect the community from harm balanced against upholding the law by pursuing fleeing drivers in order to apprehend.

Mr Cadogan thinks the pursuit of fleeing drivers does not rightfully achieve this balance, especially in instances where fleeing drivers are pursued after committing traffic offences. However, he asserts the NSW Police Force Safe Driving Policy is too restrictive in terms of permitting police to more effectively intervene during a pursuit, or thereafter stating the legislation to hold fleeing drivers to account is *'notoriously weak'*, allowing people to *'escape punishment'* by not fulfilling their obligation to identify the driver and thereafter facing inadequate penalties and sanctions to motivate their cooperation.

In 2015 Mr Cadogan published a second editorial titled *Why NSW police pursuits are out of control* specifically in relation to the deaths of Tatiana 'Talía' Tauaifaga aged 17 months at Constitution Hill near Parramatta NSW in January 2015, and Hamish Raj in 2011 (Cadogan, 2015).

The editorial again criticised the pursuit of fleeing drivers for minor offences, the pursuit of suspected impaired drivers, the inadequacies of the NSW Police Force Safe Driving Policy to permit police officers to forcibly intervene during pursuits, and shortcomings in legislation to deter and punish fleeing drivers. The editorial asserts the risks posed to the community by pursuing fleeing drivers outweighs the need to apprehend, and commends the limited pursuit model policies of Tasmania and Queensland be adopted in NSW and by inference more broadly.

Recommendation 16:

Relevant considerations raised by interest groups and community stakeholders including Mr Dunn and Ms Rose should inform the review of the AFP National Guideline and legislative reforms.

7. LEGISLATIVE REFORM PROPOSAL

7.1 Summary

7.1.1 Background

The Police Pursuit Review Committee Working Group recommends reforms to the *Road Transport Legislation* for police powers, obligation conditions, offence provisions and sentencing regimes for drivers who failed to stop for police when directed to do so:

Recommendation 13: Police Pursuits – Legislative Reform Proposal

To reduce the number of pursuits, mitigate the associated risks and hold fleeing drivers responsible and accountable, legislative reform is recommended at 13-1 to 13-23 inclusive.

This Part discusses the basis for the above recommendation, and comments on the adequacy and effect of current Road Transport Legislation surrounding pursuits while making recommendations for reform. This review relies on the ongoing findings of the Police Pursuit Review Committee Working Group Report pertaining to the prevalence of pursuits, the associated risks to community, police and the AFP in constructing an argument to reform the Road Transport Legislation.

7.1.2 Operational context

The Police Pursuit Review Committee Working Group identified this review as a means to amend both legislation and governance in order to better mitigate the risks which emanate when drivers flee from police.

A purpose of road transport legislation and policy is to achieve behavioural change in order to elevate public safety as evidenced by *The ACT Road Safety Strategy 2011-2020* (pg. 16) which references the need to change the behaviour and outlook of road users in order to achieve better outcomes. Subsequently legislation which can rely upon and indeed leverage from established behavioural models is an important pillar in this construct and equally, the recommendations of this review rely on behavioural theories, including:

Deterrence Theory

Behavioural theorists suggest that penalty provisions by themselves are not a primary consideration of those considering unlawful conduct. Rather it is the apprehension the person holds as to the likelihood, or not, of detection/apprehension that is the most prominent catalyst for influencing behaviour as opposed to escalating penalty provisions.

Deterrence theory is a construct which requires those tasked with mitigating adverse conduct via enforcement means to elevate the apprehension of detection in the mind of the offender. By doing so, only then does the severity of consequence become a consideration of an offender when combined with certainty and swiftness of prosecution (Homel, 1988).

Random Breath Testing (RBT) is a prominent example of a policing methodology which relies on the behavioural model of deterrence theory since introduction in the ACT in 1982. For this reason ACT Policing attempts to screen test 50 per cent of drivers annually (elevate apprehension of detection/apprehension), has a policy of not excusing or cautioning impaired drivers (certainty of consequence), uses immediate driver licensing

suspension notices, arrest and summons to place offenders before the Court (swiftness of consequence), outcomes which then uphold the established firm sentencing provisions which include mandatory licence disqualification and elevated repeat offender penalties (severity of consequence).

Cognitive dissonance theory

Behavioural science suggests that conflicting attitudes and behaviours cannot reliably coalesce, and that in time, the attitude and beliefs of a given person will shift to align with behaviour or vice-versa - cognitive dissonance theory.

This theory is a reliable behavioural construct, long used in road safety, and it suggests that by creating controls (countermeasures) which curtail if not entirely redact adverse behaviour, there will be an attitudinal shift towards the intended (safe) behaviour. Laws pertaining to seatbelts and the advent of Random Breath Testing are established examples, and the Graduated Licensing Scheme is a more contemporary example.

The most prominent behavioural control pertaining to pursuits is the associated legislation, and to a lesser extent, the AFP Guideline.

7.1.3 Conclusion

Significant reforms to the Road Transport Legislation are required in order to both reduce the prevalence of drivers who flee from police, and which enable police to more effectively hold fleeing drivers to account. The Road Transport Legislation in the ACT has only very recently (2014) invoked penalty and licence sanction regimes which specifically address drivers who flee from police however, those amendments are inadequate because they do little to elevate the apprehension of detection in the mind of the fleeing driver (Homel, 1988).

For this reason, meaningful and effective reforms do not solely rely upon strict penalty regimes, but include offence provisions whose obligation conditions and police powers observe behavioural theories, and which thereby meet community expectations by allowing police to more effectively hold fleeing drivers to account. Laws which recognise deterrence theory empowers police to uphold these expectations and will dissuade offenders by elevating their apprehension of prosecution because their experience with evasion will be found unreliable (*Stafford M & Warr M, 1993*).

Reforms to the Road Transport Legislation that better align with other jurisdictions, particularly NSW will achieve consistency, but it also provides further opportunity for the law to modernise and align with contemporary behavioural theory, risk appreciation and harm mitigation principles including those found in legal precedent and the AFP Guideline.

7.2 Proposed Legislative Reforms

A reform of legislative based proposals made by ACT Policing is not without precedent; reforms in June 2014 to the *Road Transport (Alcohol and Drugs) Act 1977* by virtue of the *Road Transport (Alcohol and Drugs) Amendment Act 2014 (A2014-21)* is the most recent example.

In addition, legislative reform in the road safety and road policing space is supported by the primary road safety policy of the ACT:

The *ACT Road Safety Strategy 2011-2020* (ACT RSS) and the *Road Safety Action Plan 2014-17* proposes that legislative reform of the Road Transport Legislation is necessary in order to achieve positive road safety outcomes: impaired driving reforms (*Action Items 3 & 34 - pg. 8 – 11*) and furious, reckless and dangerous driving reform (*Action Item 7 - pg. 14*).

In addition, legislative reform is supported by the *ACT Road Safety Executive Group* (DCPO-Response is the ACT Policing representative) and it's supporting committees including;

- Ministerial Directions requiring a continued focus by ACT Policing regarding anti-social and dangerous driving;
- the *ACT Road Safety Task Force* (Superintendent Traffic Operations as ACT Policing representative); and
- the *ACT Road User Working Group* (Officer in Charge Traffic Operations as ACT Policing Representative).

Reform of the Road Transport Legislation including those proposed in connection with drivers fleeing from police traditionally align with the *Human Rights Act 2004 (ACT)* by virtue of s.28 whereby obligations or duties owed by persons and powers provided to police achieve a genuine public safety interest, and are '*proportionate to achieve a legitimate aim*' (Human Rights Bill 2003 - Explanatory Statement, 2003).

7.2.1 Context of reforms

Reason for reforms

Present legislation is inadequate to:

1. Describe the danger posed to the public;
amendment to the provisions pertaining to the hierarchy of dangerous driving.
2. Provide adequate sentencing options in terms of penalty;
penalties which reflect the hierarchy of dangerous driving, revocation of licence, and limiting access to vehicles.
3. Deliver immediacy of roadside sanctions;
Immediate Suspension Notices (ISN) and vehicle seizure powers.
4. Deter the conduct (fleeing from police by use of conveyance),
strengthening of police powers to identify offenders including reverse onus on the identity of the driver.
5. Close loopholes in legislation which adversely prohibit or curtail police powers and obligations in response to pursuits; and
redacting Crimes Act 1900 provisions from Road Transport Legislation in relation to offences committed by young persons and observance of Pt1C Crimes Act 1914 (Cth).

6. Extend provisions pertaining to arrest powers and the non-presumption of bail for pursuit-related offences.
amending the Crimes Act 1900 and Bail Act 1992 to reflect deterrence theory with regard to certainty and swiftness of prosecution.

7.2.2 Progress of reforms

Reforms pertaining to pursuits need be applied more broadly than the *Road Transport Legislation* in order to have a meaningful affect, encompassing criminal statutes. In this regard, amendments rely on the support of the Attorney-General, the Minister for Police & Emergency Services, the Director of Public Prosecutions and the Human Rights Commissioner and accordingly must be sound, evidence based and compliant with the *Human Rights Act 2004 (ACT)*.

In August 2014 ACT Policing reinvigorated Road Transport Legislation reform through the *ACT Road Safety Executive Group* and which has seen realised significant and on-going road safety legislative reforms including the *Road Transport (Alcohol & Drugs) Amendment Act 2014 (A2014-21)*, *Road Transport Legislation Amendment Bill 2015*, and the *Road Transport Legislation Amendment Bill 2015 (No.2)*. The legislative reforms recommended by this review have been, in part, included in those 2015 Bills and will rely on acceptance as a package in order to have meaningful and appreciable affect.

7.3 Proposed Pursuit Legislation

The legislative amendments proposed by this review are interlinked, and each relies on another in order to have a proper effect and workability in both an operational and prosecution context; identifying the driver and bringing the driver to justice/account.

The proposed amendments are put at risk if they are considered in isolation instead of as a suite of legislative reforms. Laws that place an emphasis on self-regulation are ideal because the most effective laws leverage from deterrence theory and other behavioural models rather than enforcement.

Severity of penalty alone is insufficient to deter adverse conduct because the typical response of increasing penalties is by itself, unhelpful in reducing adverse conduct. Research shows that penalties are not typically considered by a potential offender by themselves. Rather, an elevated apprehension of detection in the mind of a person considering the unlawful conduct will more reliably dissuade the behaviour and comprise the following elements:

1. The person has an elevated apprehension of detection;
the likelihood of detection is high in the person's mind resulting from general or specific experience.
2. The person appreciates the certainty of sanction;
no cautions or good behaviour recognisance options.
3. The immediacy of sanction; and
timely trial, vehicle seizures, and on-the-spot licence suspensions.

4. The severity of the sanction.

a consideration by the person typically only if the first three conditions are met.

high penalties: imprisonment, additional licence sanction, vehicle seizure, vehicle forfeiture and repeat offender penalty regimes.

Because increased penalties do not, on their own, change conduct, but rather leverage from an elevated apprehension of detection, identification and apprehension by police, legislation which addresses those conditions is necessary (*Stafford M & Warr M, 1993 and Homel R 1988*). This outlook upholds legal precedent (*Norman –v- Spiers* and *Horan –v- Smith*) together with the principles of the AFP Guideline which direct officers to terminate pursuits when the appreciation of risk outweighs the apprehension of an offender especially where there might be other means to identify and/or apprehend the driver.

7.4 Offence - Failing To Stop

There are several police power/offence provisions available to police and authorised persons when directing vehicles and road users generally on roads and road related areas, however *s.109 Road Transport (Safety & Traffic Management) Regulation 2000* is presently the appropriate offence/obligation provision used in the case of pursuits.

The provision at *s.109 Road Transport (Safety & Traffic Management) Regulation 2000* creates an obligation for a driver to stop for police when directed to do so, an offence provision for drivers failing to stop for police and a penalty regime, presently 20 penalty units.

The statute relies on dangerous driving to occur subsequent to the refusal to stop for police in order to apply additional sanction. This approach is not ideal in that it requires an adverse outcome; the public to be endangered either potentially or specifically, as opposed to recognising the elevated risk that arises when a fleeing driver fails to stop for police.

The same issue applies with the penalty regime; 20 penalty units for failing to stop outright, and only when aggravated dangerous driving arises does the penalty increase to two years imprisonment or 200 penalty units.

The NSW statute appears to address this issue by;

1. Providing a police power/obligation to stop a vehicle at *s.169A Road Transport Act 2013*, and
2. Causing the failing to stop offence provision and accompanying penalty regime to sit outside of power/obligation provision at *s.51B CA 1900*.

In addition, the NSW statute provides sanctions concerning right to drive and vehicle seizures for failing to stop. Similar vehicle seizure sanctions in the ACT are found in the *Road Transport (Safety & Traffic Management) Act 1999*;

- *s.5A - Racing*
- *s.5B - Burnouts*
- *s.6 - Negligent Driving*
- *s.7 - Furious, reckless and dangerous driving*
- *s.7A - Aggravated furious, reckless and dangerous driving*
- *s.8 RT - Menacing driving*

These additional levels of sanction were introduced to dissuade unsafe and anti-social driving behaviour. Accordingly, the power to seize vehicles involved in pursuits is both a consistent and reliable countermeasure.

7.4.1 s.109 RT (Safety & Traffic Management) Regulation 2000 Additional powers for police

Section 109 Road Transport (Safety & Traffic Management) Regulation 2000 applies to drivers of vehicles who fail to stop when directed to do so by police.

Précis of provision:	Penalty	20 penalty units Nil imprisonment
	Summary/Indictable offence	Summary
	Statute of limitations	12 months
	Vehicle seizure power	No
	Repeat offender	No
	Mandatory licence sanction	No
	Presumption of driver identity	No

The offence provision is a summary offence per *s.190 Legislation Act 2011*.

The statute of limitations applying to the offence provision is 12 months per *s.192 Legislation Act 2011*.

The vehicle seizure powers in the *Road Transport (Safety & Traffic Management) Act 1999* do not apply because this offence provision is not scheduled as an impounding offence per *s.10AA(5) of the Act*.

The repeat offender status the *Road Transport (Safety & Traffic Management) Act 1999* does not apply because this offence provision is not scheduled as a repeat offender provision per *s.10AA of the Act*.

The automatic licence disqualification condition in *s.63 Road Transport (General) Act 1999* does not apply because this offence provision is not scheduled as an automatic disqualifying offence.

The presumption against the vehicle's responsible person condition in *s.53AA Road Transport (General) Act 1999* does not apply because this offence cannot be dealt with by way of a traffic infringement notice.

7.4.2 New South Wales Legislation

The below provides a précis of the existing NSW legislation covering police pursuits and provides an insight into the consistencies and irregularities in the law between the ACT and NSW.

Power to stop vehicles

Unlike the ACT legislation, many of the NSW police powers provisions include an offence provision or even the same statute, police powers are most often contained in the *NSW Law Enforcement (Powers and Responsibilities) Act 2002* (LEPA), including that of stopping vehicles per *s.36A* and also *s.169A Road Transport Act 2013*.

Offence for failing to stop

The NSW offence provision for drivers failing to stop for police – pursuits, is found at *s.51B Crimes Act 1900 NSW* however, unlike the ACT statute, the NSW offence provision does not contain the penalty regime for persons who engage in pursuits. Rather, the offence condition is separate from the penalty regime;

Power: *s.169A Road Transport Act 2013 – power to stop (light vehicles)*

Offence: *s.51B CA 1900*

An offence against *s.51B CA 1900* is termed a 'sanctionable offence' per *s.237 Road Transport Act 2013*, meaning the vehicle and/or its registration plates are subject to seizure powers conferred by *Part 7.6 of the Road Transport Act 2013*.

Provision	NSW	Penalty	ACT	Penalty
Fail to stop	<i>s.51B CA 1900</i>		<i>s.109 RT (S&TM) Reg</i>	20pu
First Off Prov.	Yes	3yrs	No	
Repeat Off. Prov.	Yes	5yrs	No	
Vehicle seizure	Yes		No	

7.4.3 Proposed amendment

On the basis of the above discussion, it is appropriate for failing to stop for police provision at *s.109 Road Transport (Safety & Traffic Management) Regulation 2000* to adopt the seizure powers per *s.7(1) Road Transport (Safety & Traffic Management) Act 1999*. This is a position supported by the ACT DPP who stated;

The DPP has a problem with the regulation 109 offence in that we are of the view that the maximum penalty of 20 penalty units for a police pursuit does not reflect the objective seriousness and the danger that the public is exposed to when someone causes a police pursuit, albeit a brief one.

It is noteworthy that the maximum penalty for failing to yield to police in NSW is 3 years imprisonment for a first offender, and 5 for a second' (CC2014/6161-6163).

The following sanctions should apply for an offence against *s.109 Road Transport (Safety & Traffic Management) Regulation 2000*:

1. Immediate Suspension Notice per *s.61A(g) Road Transport (General) Act 1999*.
2. Automatic licence disqualification upon conviction/finding of guilt by inclusion at *s.63 Road Transport (General) Act 1999*, and
3. Vehicle seizure per *s.5B Road Transport (Safety & Traffic Management Act 1999* including the offence provision as 'Other prohibited conduct' via the accompanying Regulation.

7.4.4 Conclusion

The following recommendations aim to deter the prevalence of drivers who flee from police and provide counter-measures which both better reflect the criminality of their conduct and which after the event, further protects the community by restraining fleeing drivers from continued adverse driving conduct of the type which brought them to the attention of police.

Outcomes will include:

- The dangerous driving offence will apply outright to drivers who flee from police as opposed to requiring actual/potential dangerous driving to occur;
- Elevated penalties for repeat offenders;
- Immediate licence/right to drive suspension notices;
- Automatic licence disqualification; and
- Vehicle seizure.

Recommendation 13-1:

s.109 RT (Safety & Traffic Management) Regulation 2000 ***Additional powers of police***

Amend the provision to transfer the penalty provision arising from *s.7A(1)(a)(i) RT (Safety & Traffic Management) Act 1999* at *s.7(1)(a) RT (Safety & Traffic Management) Act 1999* to this offence condition outright so as not to rely on dangerous driving to occur in order to invoke the elevated penalty regime.

Recommendation 13-2:

s.109 RT (Safety & Traffic Management) Regulation 2000 ***Additional powers of police***

Amend the provision to incorporate the repeat offender regime per *s.7A(1)(b) RT (Safety & Traffic Management Act 1999*.

Recommendation 13-3:***s.109 RT (Safety & Traffic Management) Regulation 2000******Additional powers of police***

Amend the provision to apply the automatic licence disqualification regime per *s.63 RT (General) Act 1999*.

Recommendation 13-4:***s.109 RT (Safety & Traffic Management) Regulation 2000******Additional powers of police***

Amend the provision to apply the immediate (licence) suspension regime per *s.61A RT (General) Act 1999*.

Recommendation 13-5:***s.109 RT (Safety & Traffic Management) Regulation 2000******Additional powers of police***

Amend the provision to apply the vehicle seizure and forfeiture regime by including the offence provision within the definition of '*other prohibited conduct*' per *s.5B RT (Safety & Traffic Management Act 1999*.

7.5 Offences Arising From Pursuits

There are often multiple offences committed by drivers of vehicles who fail to stop when directed by police to do so. This Part will consider the more common and substantive offence provisions which arise from pursuits; dangerous driving.

7.5.1 Dangerous Driving - Discussion

The provision at *s.7 Road Transport (Safety & Traffic Management) Act 1999* creates an offence provision for the driver of a motor vehicle driving furiously, recklessly, or at a speed or in a way that is dangerous to the public. The provision's penalty is one year imprisonment, 100 penalty units or both, together with an automatic licence disqualification per *s.63 Road Transport (General) Act 1999*.

The provision at *s.7A Road Transport (Safety & Traffic Management) Act 1999* creates an offence provision where there is an aggravating element present. The provision's penalty is presently two 2 years imprisonment, 200 penalty units or both, together with an automatic licence disqualification per *s.63 Road Transport (General) Act 1999*.

The provision is a catch-all statute in that both dangerous driving and reckless driving co-habit the same provision and penalty regime despite the two offences being appreciably different in terms of the extent of departure from the standard owed by drivers generally. Succinctly, reckless driving is a greater departure from the standard than dangerous driving (*Brown D 2006*).

Additionally, there are two considerations;

1. The offence of furious driving is dated and poorly defined in terms of motor vehicle use, and therefore should be removed from the legislation; and
2. There is a gap in the existing offence provisions which depicts the extent of departure from the standard owed in relation to the offence of careless driving. This offence provision was previously included in the (repealed) Motor Traffic Act 1936 at s.130 and the failure to incorporate this provision into the Road Transport Legislation when enacted in March 2000 was contrary to that stated at s.3 *Road Transport (Safety & Traffic Management) Act 1999* regarding continuance of the repealed *Motor Traffic Act 1936* provisions.

Whilst a careless driving offence provision is not specifically related to proposed Road Transport Legislation reforms surrounding pursuits, the inclusion of such a provision is consequential to proposed reforms regarding the hierarchy of the dangerous driving offence provision at s.7 and s.7A *Road Transport (Safety & Traffic Management) Act 1999*.

A careless driving provision presently exists in Victoria per s.65 *Road Safety Act 1986*.

Amendment to s.7A *RT (Safety & Traffic Management) Act 1999* is recommended to shift the aggravated penalty pursuant to s.7A(1)(a)(i) (failing to stop for police) to s.109 *Road Transport (Safety & Traffic Management) Regulation 2000*. By doing so, the law would recognise outright the inherent risk posed by drivers fleeing from police, and therefore not require a vehicle to be driven dangerously in order to invoke the elevated penalty regime associated with the conduct.

Evidence of a charge by virtue of s.7 or s.7A *RT (Safety & Traffic Management) Act 1999* most often arises from dangerous or reckless driving resulting in a collision. There are no vehicle seizure powers available to police for the mechanical inspection of vehicles involved in a collision and as such, the evidentiary limitations and prosecution risks exposed by long established police practices and expectations of the Coroner are clear. Definitive statutory powers to seize, inspect, examine, test, and interrogate first-hand or by third party, vehicles and/or their components are needed.

Unlike a vehicle seizure for burnouts or racing, a post-collision mechanical inspection is not a punishment provision outright, rather an evidential provision. However, the seizure of vehicles involved in collisions can be aligned with deterrence in that a driver is aware that police can, and will obtain evidence as to the standard of their driving leading to a collision and thereby mitigate accounts which typically attempt to down-play culpability to as much extent can be done whilst remaining credible.

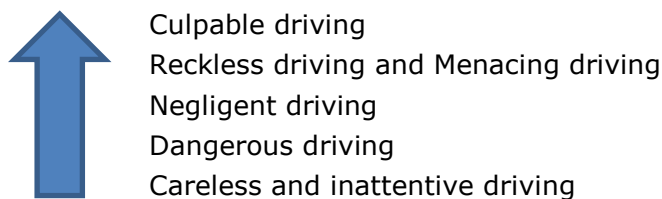
The Police Pursuit Review Committee Working Group Report found that three of 17 pursuits (17.5 per cent) occurring between 1 March and 30 April 2014 resulted in the fleeing vehicle crashing. To reduce the prevalence of pursuits and dangerous driving generally, and to afford an evidentiary mechanism to police, a seizure power to inspect vehicles following a collision is needed.

In addition, the ability to inspect, test and interrogate components including electronic data logging systems of vehicles seized subsequent to a pursuit is an important

consideration within the suite of legislative reforms being sought. The reforms leverage on accountability being placed upon the fleeing driver in order to act as a deterrent. In this regard, the ability to inspect and retrieve data from a vehicle is a reliable means to substantiate accounts provided by fleeing drivers and police. Additionally, this approach will largely negate false alibis created to evade prosecution including assertions made by the registered operator or responsible person for the vehicle that it had been stolen and therefore driven by a person unable to be identified by them.

7.5.2 Furious, reckless and dangerous driving RT (Safety & Traffic Management) Act 1999

There is an established hierarchy of unsafe driving and the position taken by various dangerous driving offences within the hierarchy portray the extent of departure from the standard and diligence owed by a driver generally (Brown, 2006);



Contrary to the hierarchy, *s.7 and s.7A Road Transport (Safety & Traffic Management) Act 1999* places both *dangerous driving* and *reckless driving* into the same offence and penalty regime despite the clear separation in the culpability of the conduct. Reckless driving (a consideration of consequence and a wonton disregard of the same) is a far greater departure from the standard owed than dangerous driving alone;

Reckless driving is the worst kind of driving in *s.7 and s.7A Road Transport (Safety & Traffic Management) Act 1999*:

...implies an unintentional or visible disregard of safety in defiance of the normal standard. It implies a deliberate abandonment of care. Excessive speed was one of its aspects (Brown, 2006 pg. 85).

The term reckless pertains not only to the state of mind of the driver:

To drive recklessly implies a serious indifference to the consequences or possible consequences at Kane –v- Dureau (1911) VLR 293; Thompson –v- Copland (1936) SASR 45; Lederer –v- Hitchins (1961) WAR 99 and Andrews –v- DPP (1937) 2 All ER 522 at 556 (Brown, 2006 pg 91).

The term reckless may also refer to being:

...descriptive of the quality of driving, or both...it is submitted that it (reckless) normally refers to driving which is appreciably different from an ordinary standard of driving and creates a real risk of collision, crash or catastrophe. The driver may or may not have given some thought to the consequences of the manner of the driving (Brown, 2006 pg. 91).

Accordingly, the inclusion of both dangerous and reckless driving per s.7 and s.7A *Road Transport (Safety & Traffic Management) Act 1999* is problematic because it is a carry-all provision which contains;

...a number of distinct and different offences contained in a single statutory provision (affords) a risk of the charge being bad for duplicity' (Brown, 2006 pg. 93).

Furious driving is a charge very rarely used by police in the ACT, and when it is, it is usually amended because the proofs are not understood, the offence is not defined by statute, the offence is poorly defined by legal precedent and where it is cited, the cases are extremely dated often referencing furious horse riding. Indeed, NSW has a furious driving provision at s.53 *Crimes Act 1900* (40) which refers to; 'Whosoever, being at the time on horseback, or in charge of any carriage...'

Therefore conduct in the vicinity of furious driving is more appropriately dealt with by virtue of a *dangerous driving* or *reckless driving* charge. The UK Crown Prosecution Service reports the offence of furious driving mimics that of reckless driving:

The offence can only be committed if the driver has a degree of subjective recklessness so far as the foreseeability of causing injury is concerned. In other words, he/she must appreciate that harm was possible or probable as a result of the manner of driving: see R v Okosi [1996] CLR 666. (Crown Prosecution Service)

In addition the UK Crown Prosecution Service said:

Prosecutors should only prosecute this offence when it is not possible to prosecute for an offence under the RTA 1988...

When a vehicle has been deliberately used as a weapon and has caused injury prosecutors should normally prosecute for the offence of dangerous driving or a specific assault under other provisions in the Offences Against the Person Act 1861, subject to there being sufficient evidence to provide a realistic prospect of conviction, for one of those offences.

7.5.3 s.7 RT (Safety & Traffic Management) Act 1999 Furious, reckless or dangerous driving

The offence provision at s.7 *RT (Safety & Traffic Management) Act 1999* was applied to drivers of vehicles who failed to stop when directed to do so by police.

This provision was amended in June 2014, including a new offence provision of *aggravated furious, reckless or dangerous driving* at s.7A *Road Transport (Safety & Traffic Management) Act 1999*.

Précis of provision:	Penalty	100 penalty units, 1yr imprisonment or both.
	Summary/Indictable offence Statute of limitations	Summary 12 months

Vehicle seizure power	No
Repeat offender	Yes
Mandatory licence sanction	Yes
Presumption of driver identity	No

The offence provision is a summary offence per *s.190 Legislation Act 2011*.

The statute of limitations applying to the offence provision is 12 months per *s.192 Legislation Act 2011*.

The vehicle seizure powers in the *Road Transport (Safety & Traffic Management) Act 1999* do not apply because this offence provision is not scheduled as an impounding offence per *s.10AA(5) of the Act*.

The repeat offender status in the *Road Transport (Safety & Traffic Management) Act 1999* does apply because of *s.7A(1)(b) of the Act*.

The automatic licence disqualification condition in *s.63 Road Transport (General) Act 1999* does apply because this offence provision is scheduled as an automatic disqualifying offence.

The presumption against the vehicle's responsible person condition in *s.53AA RT (General) Act 1999* does not apply because this offence cannot be dealt with by way of a traffic infringement notice.

7.5.4 s.7A RT (Safety & Traffic Management) Act 1999 Aggravated furious, reckless or dangerous driving

Since its enactment in June 2014, the offence provision at *s.7A RT (Safety & Traffic Management) Act 1999* is typically applied to drivers of vehicles who fail to stop when directed to do so by police where their conduct aligns with *s.7 RT (Safety & Traffic Management) Act 1999 – Furious, reckless or dangerous driving*.

Précis of provision:	Penalty	200 penalty units, 2yrs imprisonment or both
	Summary/Indictable offence	Summary
	Statute of limitations	12 months
	Vehicle seizure power	No
	Repeat offender	Yes
	Mandatory licence sanction	Yes
	Presumption of driver identity	No

The offence provision is a summary offence per *s.190 Legislation Act 2011*.

The statute of limitations applying to the offence provision is 12 months per *s.192 Legislation Act 2011*.

The vehicle seizure powers in the *Road Transport (Safety & Traffic Management) Act 1999* do not apply because this offence provision is not scheduled as an impounding offence per *s.10AA(5) of the Act*.

The repeat offender status in the *Road Transport (Safety & Traffic Management) Act 1999* does apply because of *s.7A(4) of the Act*.

The automatic licence disqualification condition in *s.63 Road Transport (General) Act 1999* does apply because this offence provision is scheduled as an automatic disqualifying offence.

The presumption against the vehicle's responsible person condition in *s.53AA Road Transport (General) Act 1999* does not apply because this offence provision cannot be dealt with by way of a traffic infringement notice.

7.5.5 New South Wales Legislation – Dangerous Driving

The NSW Dangerous Driving offence is found at *s.117 Road Transport Act 2013*.

Offence for dangerous driving – NSW

The NSW provision relating to dangerous driving differs from the ACT is that it considers consequence or outcome within the penalty regime, in cases of death or grievous bodily harm. The purpose of such penalty regimes is to give direction to the courts when sentencing. The issue with such a sentencing regime being, the conduct in itself does not differ, rather it is the outcome that changes and so driving of the same (poor) quality is sentenced disproportionately where there are differences in the outcome.

Provision	NSW	Penalty	ACT	Penalty
Dangerous driving	s.117 RT Act 2013		s.7 RT (S&TM) Act 99	1yr / 100pu
First Off Prov.	Yes	9 mth/20pu	No	
Repeat Off. Prov.	Yes	12 mth/30pu	No	
Death Prov.	Yes	10yrs	No – s.6 Neg Drive	
GBH Prov.	Yes	7yrs	No – s.6 Neg Drive	

7.5.6 Proposed amendment

The dangerous driving provisions at *s.7 and 7A Road Transport (Safety & Traffic Management) Act 1999* is to be amended to;

1. Remove 'furious driving' from the statute, or provide a definition for the offence by means of the Dictionary included in the Act, and by an accompanying Explanatory Statement.
2. Separate 'reckless driving' from 'dangerous driving' in the statute and the penalty regime to clearly show where the former sits in relation to the later referencing the established hierarchy for such offences.

3. Re-instate a careless driving provision as a consequential amendment regarding efforts to cause the Road Transport Legislation to reflect the established hierarchy for dangerous driving offences.
4. Create a police power provision to seize, inspect, examine, test, and interrogate first-hand or by third party, vehicles and/or their components following a collision.

7.5.7 Conclusion

These amendments aim to deter the prevalence of drivers who flee from police, provide offence provisions which more acutely reflect the real and potential risks that arise when fleeing from police. In addition, the amendments provide counter-measures which after the event, further protect the community by restraining fleeing drivers from the adverse driving conduct which typically brought them to the attention of police.

Outcomes will include:

- Amendment to the hierarchy of dangerous driving offences
- Seizure of vehicles involved in collisions for the purpose of mechanical inspection.

Recommendation 13-6:
s.7 RT (Safety & Traffic Management) Act 1999
Furious, reckless or dangerous driving
Amend the provision to remove '*furious driving*'.

Recommendation 13-7:
s.7 RT (Safety & Traffic Management) Act 1999
Furious, reckless or dangerous driving
Amend the provision to separate '*reckless driving*' from '*dangerous driving*' and include higher penalties (*Brown D 2006*).

Recommendation 13-8:
RT (Safety & Traffic Management) Act 1999
Create an offence of '*careless driving*' (*Brown D 2006*).

Recommendation 13-9:
RT (Safety & Traffic Management) Act 1999
Create a police power to seize vehicles which have been involved in a collision for the purposes of a mechanical inspection.

7.6 Identifying the Driver

The AFP Guideline requires that police pursuits are viewed from the position that risk to the community, to pursuing police and to the occupants of the pursued vehicle is the paramount consideration. Where there are other means to bring the offender to justice, these alternative means ought to be observed as per *AFP National Guideline: ACT Policing: Urgent duty driving and pursuits - Part 24*.

The AFP Guideline aligns with legal precedent in the ACT: *Horan –v- Smith (Supreme Court ACT, 23 September 1986)* places consideration of the risk to other road users by the driver of the police vehicle above the attempts to apprehend an offender or to intervene in the commission of a crime.

Subsequently, approximately half of the pursuits are terminated by police, especially in circumstances where the police can rely upon police powers to require the responsible person for a vehicle i.e. the owner to identify the driver.

This review reveals that about half those pursued were identified and charged (*Part 3.1*). The law requires a driver to be identified to police by responsible person (owner or registered operator) when required to do so; *s.60 Road Transport (General) Act 1999*. On those occasions where the responsible person does not fulfil their requirement to identify the driver, they avoid the sanctions and penalties which arise from the driving charges.

Subsequently there are a number of statutory provisions proposed which potentially will influence the effectiveness, reach and scope of a *s.60 Road Transport (General) Act 1999* obligation to identify a driver, and these provisions are included hereafter. These provisions are necessary to identify the driver of a vehicle that fails to stop for police citing the termination considerations drawn from the AFP Guideline regarding recognition evidence of the driver. Legal precedent arising from *Mundarra Smith v R [2001] HCA 50; 206 CLR 650; 181 ALR 354; 75 ALJR 1398 (16 August 2001)* requires recognition evidence to be compelling otherwise the recognition evidence may be deemed inadmissible.

Provisions which oblige certain people to identify a driver require police powers to require the identification, obligations upon the person to positively respond to such a requirement, and penalty provisions including owner-onus liability to coerce a genuine response. Consideration needs to be given as to whether the provision at *s.60 Road Transport (General) Act 1999* sufficiently fulfils its purpose, and is appropriately supported by associated provisions, including some contained in the *Crimes Act 1900* in order to do so.

7.6.1 s.60 RT (General) Act 1999

Police officer or authorised person may require people to disclose identity of driver

The provision at *s.60 RT (General) Act 1999* is both a police powers and an offence provision; it provides police with the power to require persons to identify the driver of a vehicle and it includes a penalty regime for those whom refuse or fail to identify the driver.

The powers provision is limited in three ways:

1. It can only be used in connection with an offence against the Road Transport Legislation as opposed to any offence involving the use of a vehicle in the commission of an offence;
2. It only applies for attempts to identify the driver/rider of a conveyance as opposed to any person riding in or on a conveyance. It cannot be used to identify a passenger; and
3. There is no jurisdictional nexus that gives consideration to the location of the ACT within NSW. The police power and subsequent offence condition has no legal effect for ACT police attending Queanbeyan to speak with a registered operator of a vehicle having committed an offence in the ACT.

Conversely, the ACT statute cannot be utilised by NSW police visiting the ACT to enquire into the identity of a driver having committed an offence in NSW.

The above issues occur regardless of the AFP member being a recognised Law Enforcement Official in NSW or a NSW Police Officer being a Special Constable in the ACT.

Précis of provision:	Penalty	20 penalty units Nil imprisonment
	Summary/Indictable offence	Summary
	Statute of limitations	12 months
	Vehicle seizure power	No
	Repeat offender	No
	Mandatory licence sanction	No
	Presumption of driver identity	No

The offence provision is a summary offence per *s.190 Legislation Act 2011*.

The statute of limitations applying to the offence provision is 12 months per *s.192 Legislation Act 2011*.

The vehicle seizure powers in the *Road Transport (Safety & Traffic Management) Act 1999* do not apply because this offence provision is not scheduled as an impounding offence per *s.10AA(5) of the Act*.

There is no repeat offender status in the Road Transport Legislation.

The automatic licence disqualification condition in *s.63 Road Transport (General) Act 1999* does not apply because this offence provision is not scheduled as an automatic disqualifying offence.

The presumption against the vehicle's responsible person condition in *s.53AA RT (General) Act 1999* does not apply because this offence provision is not actioned by issuance of a traffic infringement notice.

7.6.2 s.53AA RT (General) Act 1999 Presumption against responsible person

The provision at *s.53AA RT (General) Act 1999* is a machinery provision enacted in May 2012 primarily for speed/red-light camera management to prevent registered operators of vehicles from avoiding penalty and sanction events following the issue of camera derived infringement notices.

The provision places a reverse onus on the registered operator of a vehicle that should a driver not be identified by the operator, not only is the registered operator for the vehicle liable for the penalty, but they are also deemed to have been the driver.

Notwithstanding the primary purpose of the provision appears to have been created in connection with infringements issued under the speed/red-light camera network, it applies to all infringements, including those issued by police.

Précis of provision:	Penalty	N/A
	Summary/Indictable offence	N/A
	Statute of limitations	N/A
	Vehicle seizure power	N/A
	Repeat offender	N/A
	Mandatory licence sanction	N/A
	Presumption of driver identity	Infringement notices only

7.6.3 Impediments - Identifying the driver

Section 60 *RT (General) Act 1999* creates a police power, offence provision and penalty regime in relation to persons being required to identify a driver of a vehicle having committed an offence against the Road Transport Legislation. The penalty is 20 penalty units.

Persons who refuse or fail to identify the driver are not subject to the driving charges including licence sanctions and penalties where proceedings commence by summons or arrest. This is a relatively common, long-standing and poor prosecutorial outcome whereby defendants charged with failing to identify a driver per *s.60 RT (General) Act 1999* escape prosecution and subsequent sanction by the Court for the associated driving offences including those where a pursuit arises;

- Case No. CC2006/6825
Incident: Driver failed to stop for police and attempted to run a police officer over.
Charge: Failing to identify the driver.
Court: Contested Hearing in the ACT Magistrate's Court – Plea of not guilty.
Result: Convicted - \$800 fine.
Was suspected of, but unable to be charged with the driving offences.
- Case No. CC2014/5491
Incident: Driver performed a burnout and drove dangerously.
Charge: Failing to identify the driver.
Court: Contested Hearing in the ACT Magistrate's Court – plea of not guilty amended to a plea of guilty on the date of the Hearing.

Result: Convicted - \$215 fine.
Was suspected of, but unable to be charged with the driving offences.

In contrast, when an infringement notice is issued to a registered operator for an offence, that person is deemed not only to be liable for the fine, but they are also deemed to have been the driver unless they prove otherwise; *s.53AA RT (General) Act 1999*.

Offences including fleeing from police and dangerous driving are not eligible for a Traffic Infringement Notice per *Road Transport (Offences) Regulation 2005*, and regardless, would be unlikely to have the same issued given their gravity. The remedy therefore, is to widen the reach of *s.53AA RT (General) Act 1999* to include any offences no matter how prosecuted where a registered operator/responsible person has failed or refused to identify the driver per *s.60 RT (General) Act 1999*. There are considerable existing protections built-in to *s.60 RT (General) Act 1999* for those persons who cannot without proper diligence identify the driver.

This proposal is not without precedent. In the Victorian *Road Safety Act 1986* at *s.66*; a reverse onus is placed on the registered operator of a vehicle in connection with prescribed offences; pursuits, driving disqualified, dangerous driving, improper use of a vehicle (burnouts), racing and serious level crossing offences per *s.84C(1)* of the Act.

Road Transport Legislation or criminal statute offences committed by passengers in vehicles cannot be actioned by *s.60 RT (General) Act 1999* given the provision pertains solely to identifying a driver. JaCS is well aware of this shortcoming following incidents of cyclists being pelted with objects thrown by passengers in vehicles. The reach of *s.60 RT (General) Act 1999* needs therefore to be broadened to include an obligation to identify passengers committing offences.

The limitation of *s.60 RT (General) Act 1999* to Road Transport Legislation offences is problematic, and fails to reflect the use of vehicles in significantly serious crimes which place the community at risk. Subsequently the provision at *s.60 RT (General) Act 1999* needs to be amended to take in criminal statutes and not solely be limited to the Road Transport Legislation. The state of Victoria identifies this outcome per *s.60 Road Safety Act 1986* and does not require an offence against the Victorian Road Transport Legislation or indeed any offence at all to have occurred when requiring a driver to be identified.

The provision at *s.60 RT (General) Act 1999* does not take into account the geographical nature of the ACT, nor does it assist law enforcement officials in other jurisdictions by enabling identification of ACT residents having committed road transport offences whilst interstate. The provision requires amendment to cause any requirement made outside the ACT to have legal effect in response to driving charges arising in the ACT, and conversely, for any requirement made in the ACT under an interstate law similar to *s.60 RT (General) Act 1999* to have legal effect to in relation to driving charges arising interstate.

7.6.4 Conclusion

These following recommendations aim to deter the prevalence of drivers who flee from police by providing obligation and offence provisions to more acutely hold certain categories of people responsible for driving conduct.

The outcome will include stronger provisions for persons to identify drivers and passengers who commit crimes.

Recommendation 13-10:

s.53AA RT (General) Act 1999

Presumption against responsible person

Amend the provision at *s.53AA RT (General) Act 1999* to apply to any offence where a requirement per *s.60 RT (General) Act 1999* has been made and the person has refused or failed to identify the fleeing driver without proving their diligent enquiry in order to do so.

Recommendation 13-11:

s.60 RT (General) Act 1999

Police officer or authorised person may require people to disclose identity of driver

Amend the provision to respond to offences other than those found in the Road Transport Legislation where said offence/s are undertaken in connection with the use of a vehicle.

Recommendation 13-12:

s.60 RT (General) Act 1999

Police officer or authorised person may require people to disclose identity of driver

Amend the provision to respond to offences committed by passengers in or on a vehicle including offences other than those found in the Road Transport Legislation where said offence/s are undertaken in connection with the use of a vehicle.

Recommendation 13-13:

s.60 RT (General) Act 1999

Police officer or authorised person may require people to disclose identity of driver

Amend the provision to respond to requirements to identify the driver being made outside the ACT (for offences committed therein) and for offences committed outside the ACT where the requirement is furnished within the ACT.

7.7 Vehicle Seizure

The seizing of vehicles in relation to Road Transport Legislation offences was an established legislative response in all Australian jurisdictions including the ACT per the *Motor Traffic Act 1936* (repealed in March 2000 when replaced by the Road Transport Legislation).

In the ACT, vehicles can be seized from a public place within 10 days of the prescribed offence occurring at *s.10B Road Transport (Safety & Traffic Management) Act 1999*. The prescribed offences are:

1. *s.5A Road Transport (Safety & Traffic Management) Act 1999*
Races, attempts on speed records, speed trials
2. *s.5B Road Transport (Safety & Traffic Management) Act 1999*
Burnouts and other prohibited conduct

In addition, vehicles can be ordered to be seized by a Magistrate in relation to:

3. *s.8 RT (Safety & Traffic Management) Act 1999*
Menacing driving

Vehicles seized are subject to the following impounding periods:

1. For a first offender;
three months unless the court otherwise orders, or
2. For a repeat offender;
forfeited to the Territory, unless the court otherwise orders.

Costs in relation to the towing of the seized vehicles are presently borne by ACT Policing however, a statutory cost recovery mechanism is presently being considered by JaCS. Presently, a minimal storage fee of \$3 per day is passed on by ACT Policing to the owners of vehicles seized.

NSW power to seize a vehicle is found at *s.239 Road Transport Act 2013*.

This provision in relation to seizing a vehicle applies only to NSW registered vehicles or unregistered vehicles, and in the case of interstate registered vehicles the power extends to the seizure of registration plate/s.

In addition, the NSW vehicle seizure powers apply to *sanctionable offences* per *s.238 Road Transport Act 2013*, namely:

- Pursuits;
- High-range speeding (>45km/h in excess of the speed limit); and
- Racing.

The Victorian power to seize a vehicle is found at *s.84F Road Safety Act 1986* and applies to a *relevant offence* per *s.84C(1) Road Safety Act 1986*, namely:

- Pursuits;
- Disqualified driving;
- Dangerous driving;
- Improper use of a vehicle (burnouts);
- Racing; and
- Serious level crossing offences.

The expansion of grounds for which a vehicle may be seized is a recognised countermeasure in terms of deterrence. Controls/countermeasures like the Graduated Licensing System, Alcohol Interlocks, demerit points, and automatic licence sanction provisions are established countermeasures which appreciably respond to high-risk conduct.

The ACT-based vehicle seizure offences are limited in scope, especially in comparison with the other jurisdictions (NSW and VIC). There is scope to broaden the offences for which vehicle seizures can be made, but to also amend the processes by which vehicles can be seized in order to limit inefficient administrative functions of police when seizing. Vehicles seized require tow-trucks to attend the road-side scene and police to escort the vehicle to the ACT Policing Exhibit Management Centre where they have to lodge vehicle including searching the vehicle, locating identifiers, recording condition including any existing damage, and inventorying the contents of the vehicle. This process takes some hours to achieve and is an inefficient use of policing resources.

The *Confiscation of Criminal Assets Act 2003* also provides a mechanism to confiscate and cause vehicles used by fleeing drivers to be deemed as tainted property (s.10 – property used in the commission of an offence). Vehicles seized can then be restrained and subsequently forfeited to the Territory per s.54 of the Act where application is made or per s.58 of the Act upon conviction of a serious offence (≥ 5 yrs).

7.7.1 Proposed amendment

Vehicle seizure powers at *Div 2.3 Road Transport (Safety & Traffic Management) Act 1999* should be amended to;

1. Capture the offence provision for failing stop when directed by police at s.109 RT (*Safety & Traffic Management*) Regulation 2000.
2. Capture the offence provisions at s.7 or at s7A RT (*Safety & Traffic Management*) Act 1999 regarding dangerous driving.
3. Capture the offence provision at s.60 RT (*General*) Act 1999 where a registered operator or responsible person for a vehicle refuses or fails to identify the driver pursuant to a requirement having been made.
4. Capture other high-risk driving offences regardless of how prosecuted (infringement, summons or arrest) including RT (*Alcohol & Drugs*) Act 1977 driving related offences, alcohol interlock offences, high-range speeding offences and sanctioned driving offences.
5. Whilst not limiting the power to seize a vehicle on-the-spot, provide police with a means to serve a notice requiring production for seizure at a later time regardless of where the vehicle is located at the time the notice is served (public or private property), nor the jurisdiction in which the notice is served.
6. Create a statutory cost recovery or user-pays mechanism for the conveyance and storage of seized vehicles which would also operate for disposal costs where the person refuses or fails to collect the seized vehicle at the conclusion of the seizure period.
7. Permit police to seize a vehicle post collision or pursuit in order to inspect, test and interrogate the vehicle including its mechanical components and electronic/data systems.

7.7.2 Conclusion

These amendments aim to deter the prevalence of drivers who flee from police, provide offence provisions which more acutely reflect the real and potential risks created by fleeing drivers, and provide counter-measures which after the event, further protect the community by restraining fleeing drivers from the adverse driving conduct which typically brought them to the attention of police.

Outcomes will include:

- Seizure of pursued vehicle to conduct a mechanical inspection and electronic interrogation;
- Seizure of vehicles for other high-risk offences; and
- Cost-recovery for towing and storage fees for seized vehicles.

Recommendation 13-14:

Div 2.3 RT (Safety & Traffic Management) Act 1999

Create a police power to seize vehicles where the driver has refused/failed to stop for police per *s.109 RT (Safety & Traffic Management) Regulation 2000* and to permit police to seize a vehicle post collision or pursuit in order to inspect, test and interrogate the vehicle including its mechanical components and electronic/data systems.

Recommendation 13-15:

Div 2.3 RT (Safety & Traffic Management) Act 1999

Create a police power to seize vehicles where the driver has breached either *s.7* or at *s.7A RT (Safety & Traffic Management) Act 1999*.

Recommendation 13-16:

Div 2.3 RT (Safety & Traffic Management) Act 1999

Create a police power to seize vehicles where the registered operator or responsible person has refused or failed to identify a fleeing driver pursuant to their obligation to do so at *s.60 RT (General) Act 1999*.

Recommendation 13-17:

Div 2.3 RT (Safety & Traffic Management) Act 1999

Create a police power to seize vehicles for other high-risk driving offences regardless of how prosecuted (infringement, summons or arrest) including *RT (Alcohol & Drugs) Act 1977* driving related offences, alcohol interlock offences, high-range speeding offences and sanctioned driving offences.

Recommendation 13-18:***Div 2.3 RT (Safety & Traffic Management) Act 1999***

Without limiting the existing powers, create a provision which provides police with a means to seize a vehicle by notice for production at a later time regardless of neither where the vehicle is located at the time the notice is served (public or private property) nor the service of notice for production occurring outside of the ACT.

Recommendation 13-19:***RT (Safety & Traffic Management) Act 1999***

Create a statutory cost recovery or user-pays mechanism for the conveyance and storage of seized vehicles which would also operate for disposal costs where the person refuses or fails to collect the seized vehicle at the conclusion of the seizure period.

7.8 Consequential Amendments

There are several consequential amendments required to support the proposed pursuit reforms.

The paramount consideration arising from legal precedent and the AFP Guideline concerns the risk to the community, police and those in the offending vehicle. In this regard, the AFP Guideline requires pursuits to be terminated where, amongst other considerations, the driver has been or can be identified by other means. In such circumstances police rely on the obligations issued to certain classes of people to respond to requirements concerning the identity of the driver:

1. Responsible person for a vehicle;
2. Person in possession of a vehicle; and
3. Anyone else who can give information to identify a driver.

The legislation is inadequate in circumstances where those classes of persons choose not to fulfil their obligation to identify the driver, because a person cannot be charged with the substantive driving offences which led to the *s.60 Road Transport (General) Act 1999* requirement being furnished without evidence of them being the driver.

The legislation is unable to effectively deal with offences committed by passengers as there is no police power / obligation provision for that category of person to be identified.

The legislation that authorises police to require persons to identify the driver is limited in scope to the Road Transport Legislation; the power to identify a driver can be used by any trivial breach of the road rules, but is unavailable for substantive offences, especially where protection of the public is a genuine concern such as armed robbery, abduction, aggravated assault, and family violence offences.

The legislation has no jurisdictional nexus for circumstances where Road Transport Legislation offences are committed in the ACT but the person/s that can identify the driver are located interstate, and vice versa.

The legislation recognises the high-volume and impediment it places by enacting *Pt. 1C Crimes Act 1914 (Cth)* but does so in a limited way, impeding resolution of enquiry and conflicting with Road Transport Legislation provisions.

The legislation no longer recognises that offences committed by young persons in connection with their use of a vehicle needs be separated from the protections traditionally awarded to them. The present statute prevents a police officer from requiring a young person to do anything in relation to the investigation of an offence for which they are a suspect without having a parent or suitable adult guardian present; producing a licence, stating their bona fides, undergoing a screening test, undergoing a breath test or oral fluid analysis are examples.

Consideration as to the police powers pertaining to arrest and bail arising from a pursuit should be considered. Presently the unique risk a pursuits poses is not a consideration for either arresting a person or refusing (police) bail as a means to bring the offender before the Court at the earliest opportunity. Despite the offender demonstrating their intent to evade police and ultimately justice, the arrest power qualifications are required to be met per *s.212(1)(b) Crimes Act 1900*. There is precedent for arrest powers to not be subject to the six considerations in *s.212(2) Crimes Act 1900* for family violence matters.

Additionally the offender is entitled to a presumption of bail per *s.8 Bail Act 1992* because the relevant Road Transport Legislation offences are not scheduled in *s.9B Bail Act 1992* and therefore they are entitled to bail at *s.9A(2) Bail Act 1992*. The statute does not reflect the circumstances which brought the offender into police custody being that the offender was attempting to evade apprehension and justice.

7.8.1 Part 1C Crimes Act 1914 (Cth) – Application to the RTL

The provision at *s.187 Crimes Act 1900* is a machinery provision that allows the interview of protected persons for Commonwealth matters (*Crimes Act 1914 - Commonwealth*) within ACT statutes.

7.8.1.1 s.187 Crimes Act 1900 Application of Crimes Act, pt 1C (Cth)

The provision recognises both the nature of Road Transport Legislation offences (strict liability) and the volume of the offences by redacting the application of *Pt. 1C Crimes Act 1914* for the Road Transport Legislation in terms of;

1. The *Road Transport (Alcohol & Drugs) Act 1977*,
2. Offences where a Traffic Infringement Notice (TIN) is available (*Road Transport (Offences) Regulation 2008*), and the police officer intends to issue a TIN, and
3. Circumstances where the police officer does not intend to prosecute and may instead caution.

Précis of provision:	Penalty	N/A
	Summary/Indictable offence	N/A
	Statute of limitations	N/A
	Vehicle seizure power	N/A
	Repeat offender	N/A
	Mandatory licence sanction	N/A
	Presumption of driver identity	N/A

Both the now repealed *Children's Services Act 1986* (s.29) and the *Children & Young People Act 1999* (s.77) removed the protections afforded to Young Persons in certain circumstances including a number arising from the Road Transport Legislation.

Further, s.33 *Children's Services Act 1986* and later s.81 *Children & Young People Act 1999* required police to complete a Consent to Prosecution form except when the Young Person was licensed (any form) and the offence arose out of the use of a vehicle – refer s.s(8).

Currently s.187 *CA 1900* precludes *Part 1C Crimes Act 1914 (Cth)* from both the *Road Transport (Alcohol & Drugs) Act 1977* and in circumstances where an officer intends to proceed by way of a TIN or caution.

In relation to Young Persons, s.23K (Pt 1C) *Crimes Act 1914 (Cth)* – questioning of persons under 18 years of age; while the provision requires the presence of an interview friend, however s.187 *Crimes Act 1900* removes that requirement in those three particularised circumstances.

Notwithstanding this outcome, s.252G *Crimes Act 1900* effectively reinstates s.23K (Part 1C) *Crimes Act 1914 (Cth)* and legal opinion provided by AFP Legal (Traffic Law Enforcement Program curriculum – Part 14.2 of Chapter 1) suggests that s.252G *Crimes Act 1900* is indeed required to be observed and therefore it subsequently precludes a police officer from causing a Young Person to do anything unless the conditions imposed by s.252G(2) *Crimes Act 1900* are met.

The repealed Acts pertaining to Young Persons properly observed they drive and therefore should be subject to the obligations of the general community in relation to offences arising from the use of a vehicle. Subsequently it is appropriate to redact the reach of s.252G *Crimes Act 1900* from the Road Transport Legislation in so far as it applies to Young Persons (excluding children).

7.8.1.2 Impediments – Part 1C Crimes Act 1914 (Cth)

The provision at s.187 *Crimes Act 1900* creates a police obligation to observe *Part 1C Crimes Act 1914 (Cth)* for protected persons, suspects and those arrested in the ACT excepting those circumstances where;

1. The offence is borne from the *Road Transport (Alcohol & Drugs) Act 1977*,
2. The police officer intends to proceed by way of an infringement notice, and
3. The police officer intends to take no further action (caution).

The second condition is restrictive and fails to recognise that many offences, most notably the serious Road Transport Legislation offences including dangerous driving at s.7 and 7A *Road Transport (Safety & Traffic Management) Act 1999* are unable to be actioned by infringement pursuant to *Road Transport (Offences) Schedule 2005*, and indeed would unlikely be actioned in that manner regardless given the sentencing regime including automatic licence disqualification could not be invoked without proceeding by summons or arrest.

The provision also conflicts with positive or coercive powers and obligations and in doing so creates significant doubt as to the effect of those provisions because of the rights afforded by *Part 1C Crimes Act 1914 (Cth)*.

A solution is to remove all of the Road Transport Legislation from s.187 *Crimes Act 1900*; an outcome which does not eliminate the requirement of police to caution to ensure the admissibility of evidence obtained thereafter - protections per s.138 and s.139 *Evidence Act 2011* and s.22 *Human Rights Act 2004*.

7.8.1.3 Proposed Amendments to Crimes Act 1900

Remove s.187 *Crimes Act 1900* obligations relating *Part 1C Crimes Act 1914 (Cth)* for Road Transportation Legislation offences to afford consistency in the application of the law.

Recommendation 13-20:

s.187 CA 1900

Application of Part 1C Crimes Act 1914 (Cth)

Amend the provision to remove the Road Transport Legislation entirely from s.187 CA 1900.

7.8.2 Young people

The provision at s.252G *Crimes Act 1900* is a police obligation provision for children and young persons either under arrest or in the company of a police officer in connection with any offence, and it requires the police officer not to interview, question nor to require the child or young person to do anything unless a parent or responsible adult is present.

7.8.2.1 s.252G Crimes Act 1900 children and young people about offences

Interviewing

Unlike the provision at s.187 *Crimes Act 1900* there is no recognition of the Road Transport Legislation in this provision and so it applies to all Road Transport Legislation matters including the positive coercive powers of police and arising obligations of suspects to respond to certain requirements to provide information. For example;

1. Driver to produce licence;
2. Driver to state name, date of birth and address;
3. Driver to remove face covering;
4. Driver to provide sample signature;
5. Driver to undergo screening test;

6. Driver to undergo breath or oral fluid analysis;
7. Requirement to identify the driver;
8. Driver to give an account of a collision; and
9. Driver to give an account concerning the use of trader plates.

Précis of provision:	Penalty	N/A
	Summary/Indictable offence	N/A
	Statute of limitations	N/A
	Vehicle seizure power	N/A
	Repeat offender	N/A
	Mandatory licence sanction	N/A
	Presumption of driver identity	N/A

7.8.2.2 Impediments – s.252G CA 1900 Young People

Previous iterations of the *Children & Young Persons* legislation held similar protections for young persons except when they were in the company of a police officer in connection with their (unlawful) use of a motor vehicle. These statutes recognised the volume of Road Transport Legislation related offences and the obligations owed by mature young persons when using a vehicle.

The present legislation fails to appreciate this outcome and makes any interaction between a police officer and a young person suspected of having committed a Road Transport Legislation offence place an onerous and unreasonable impost and delay – the young person is excused from doing anything (undergoing a screening test for example) through to responding to questions and obliged statements at the kerb-side.

7.8.2.3 Proposed Amendments to Crimes Act 1900

Remove the obligations of police in relation to the investigation of offences committed by young persons where the person is in the company of a police officer in connection with their unlawful use of a vehicle pursuant to the Road Transport Legislation.

Recommendation 13-21:

s.252G CA 1900

Interviewing children and young people about offences

Amend the provision to remove the *Road Transport Legislation* entirely in so far as it applies to young persons.

7.8.3 Arrest and bail

The arrest provision used by police in the ACT is found at s.212(1) *Crimes Act 1900*; a police power which requires that arrests can only be made if a summons would not be effective.

The Road Transport Legislation derived offences for drivers who flee from police typically portray danger posed to the public in a genuine sense and thereby fail to mitigate the vexed issue of attempting to balance the risk arising from a pursuit (the duty owed by police to protect the community from harm) outweighing the purpose for which police are attempting to apprehend the fleeing driver (the duty owed to the community to detect crime and apprehend offenders);

The dilemma: law enforcement versus public safety

A review of police pursuit research reveals that law-enforcement decision makers throughout the world are struggling to find the right balance between the need for police to be effective in apprehending offenders and the need for them to consistently act in a manner that minimises any risk to public safety. For this reason, police pursuits constitute a particularly difficult area of policy. On the one hand, police are expected to use whatever police powers are reasonable and necessary to enforce the law, including engaging in pursuits to apprehend drivers who flee or fail to stop when directed to do so by a police officer. On the other hand, pursuits can create situations that are far more dangerous to the public than the original offence. This point is perhaps best illustrated by Alpert and Madden (1994, p. 43): 'Perhaps the only thing more dangerous than a drunk driver on the road is a drunk driver being chased by the police!' (Hoffman, 2003) pg.3.

Deterrence theory requires:

1. Prosecution must be swift
There must be immediacy to prosecution and sanctions arising.
2. Prosecution must be certain
The person must be held to account - no cautions administered.
3. Penalties must be severe
Mandated penalty regimes.

The first mentioned condition is somewhat achieved by existing Road Transport Legislation statutes and will be strengthened by reforms proposed in this review by expanding vehicle seizure powers and broadening the application of Immediate Suspension Notices. These steps are likely insufficient in themselves, especially in the case of repeat offenders, and therefore the position might be taken that arrest in relation to a pursuit should be imbedded into the arrest powers to negate the six conditions attached to arresting offenders at s.212(1) *Crimes Act 1900*. This outlook is not without precedent and has been achieved in family violence matters per s.212(2) *Crimes Act 1900*.

Offenders arrested have a presumption to bail per s.8 *Bail Act 1992*. The position may therefore be taken to amend the bail provision to remove the presumption of bail so that offenders are swiftly brought before court and thereby immediately held to account.

Presently, an offender is entitled to a presumption of bail per s.8 *Bail Act 1992* because the relevant Road Transport Legislation offences are not scheduled within s.9B *Bail Act 1992* and thereby entitling an apprehended (fleeing driver) to bail at s.9A(2) *Bail Act 1992*. This statute takes a position contrary to the circumstances which brought the offender into custody, that is, the offender was attempting to evade apprehension.

7.8.4 Conclusion

These amendments aim to deter the prevalence of drivers who flee from police, provide offence provisions which more acutely reflect not only the real and potential risks created by fleeing drivers, but also the criminality of the conduct. They also aim to provide counter-measures which further protect the community by restraining fleeing drivers from the adverse driving conduct.

Outcomes will include:

- Swiftness of holding fleeing drivers to account;
- Certainty of holding fleeing drivers to account; and
- Portray the gravity of the conduct displayed by the fleeing driver.

Recommendation 13-22:

s.212(1) CA 1900

Power of arrest without warrant by police officers

Amend the provision to remove the six arrest conditions as per *s.212(2) CA 1900* for an offence against *s.109 RT (Safety & Traffic Management) Regulation 2000*.

Recommendation 13-23:

Division 2.3 No presumption for bail

s.9B Bail Act 1992

Div 2.2 not to apply to certain offences

Include *s.109 RT (Safety & Traffic Management) Regulation 2000* within the schedule of offences for which there is a presumption against bail.

7.9 Overall Conclusion of recommended reforms

The legislative amendments recommended by this review are a package of reforms which largely rely on established behavioural theories to deter fleeing drivers and to amend police practices.

Strict and onerous offence and penalty provisions in themselves run the risk of motivating a driver to flee from police (Palmer, 2003), and for this reason the legislative reforms recommended by this review should be adopted as a package in order to hold fleeing drivers to account, and thereby deterring drivers from fleeing from police.

Additionally, the recommended package of legislative reforms mitigates the need for police officers to immediately identify and apprehend a fleeing driver, and in this regard provides police officers with other options to identify and apprehend a fleeing driver.

The package of legislative and policy reforms recommended by this review builds on this basis, and if adopted aims to:

- Enshrine public safety and the philosophy of continual risk appreciation as the priority;
- Better define the balance between public safety (primary) and upholding the law (secondary);
- Deter fleeing drivers; and
- Diminish the need immediately apprehend fleeing drivers.

8. AFP GOVERNANCE REFORM PROPOSAL

8.1 Summary

8.1.1 Background

The *AFP National Guideline: ACT Policing: Urgent duty driving and pursuits* (the AFP Guideline) was originally a governance item solely for ACT Policing, but later adopted by the wider AFP in the absence of a broader National Guideline. For this reason the document is ACT Policing centric and does not, in scope or content, reliably address the statutory and administrative controls of AFP portfolios located outside of the ACT.

The AFP Guideline surrounding police pursuits should be periodically examined to ensure that contemporary governance arrangements meet the needs of the broader AFP. This paper proposes the existing AFP Guideline be amalgamated with other related policies to form a single policy document while also providing specific policy for each AFP geographical jurisdiction to operate.

The purpose of this Part is to provide an overview of the proposed reform of the *AFP National Guideline: ACT Policing: Urgent duty driving and pursuits* (AFP Guideline) and to portray the philosophy, scope, and layout of the recommended governance framework.

8.1.2 Operational context

The AFP Guideline is the leading governance for pursuits and urgent duty driving and is authorised by the CPOACT.

This review recommends amendment to the governing framework relating to police pursuits including legislative reform, policy reform and organisational culture change.

Part 7 of this review recommends legislative amendment surrounding pursuits, and reform to the AFP governance framework is recommended in this Part. Both categories of reform rely on each other in order to have a proper, reliable and appreciable affect.

The Terms of Reference for this review include;

'...to provide advice and recommendations to the CPO about the AFP's police pursuit governance, procedures and frameworks. Particular emphasis is on an analysis of recent pursuits conducted in the ACT to fully explore whether AFP procedures provide appropriate protection to police and to the community'.

The existing AFP Guideline needs to be reviewed to ensure it remains best practice:

1. The AFP Guideline was originally an ACT Policing specific governance document,
2. ACT Policing governance was adopted by the AFP as a National Guideline but could not effectively be applied nationally, and
3. The existing AFP National Guideline is ACT-centric in terms of the scope and purpose, referencing ACT statutes, acronyms, positions of authority and responsibility, boards of review and vehicle platforms.

The remit of any proposal to reform to the AFP Guideline belongs to ACT Policing as it is authorised by CPOACT. This position was reaffirmed by the CPOACT during his deliberations with the Police Pursuit Review Committee Working Group during the consultation phase for this report.

8.1.3 Conclusion

The AFP Guideline surrounding police pursuits requires continual review to ensure contemporary governance that meets the needs of the broader AFP. This review proposes the existing AFP Guideline be amalgamated with other related policies to form a single policy document providing specific policy for each AFP geographical jurisdiction to operate.

8.2 Existing AFP Governance Framework

There are presently several AFP governance documents pertaining to the use of vehicles by members of the AFP including authorities, permits, classifications, reporting, incident treatments, obligations, sanctions and bodies of review;

1. AFP National Guideline: ACT Policing: Urgent duty driving and pursuits

Internal: National Guideline/CN00004

External: <http://www.police.act.gov.au/~media/act/pdf/afp-national-guideline-act-policing-urgent-duty-driving-and-pursuits-review.pdf>

Owner: Chief Police Officer – ACT Policing

Purpose: *This National Guideline outlines the policies and procedures to balance accountability with empowerment and initiate, facilitate, and consolidate corporate and individual decision making processes in relation to the performance of Urgent Duty Driving and Pursuits.*

Reviewed: 5 December 2007

Due: 5 December 2009 – Overdue

Doc No. CN00004

2. Aide Memoire on the safe driving program (ACT Policing)

Internal: ACT030_AM_Safe Driving Program

External: N/A

Owner: Chief Police Officer – ACT Policing via Supt. Traffic Operations

Purpose: *The purpose of this aide memoire is to ensure that every appointee of ACT Policing has the required competencies to drive vehicles that they may be required to drive while in the course of their employment.*

This aide memoire ...seek(s) to enhance:

- *a safe working environment for all appointees of the AFP*
- *the safety of the public by providing adequate training and driver education to all appointees of the AFP*
- *the public image of the AFP by demonstrating responsibility regarding driver education and the appropriate use of vehicles in line with their design and construction limitations.*

Reviewed: 15 November 2013

Due: 15 November 2015

Doc No. ACT030

3. AFP National Guideline on AFP vehicles

Internal: National Guideline/Pages/FN00004

External: N/A

Owner: Chief Financial Officer – AFP Finance

Purpose: This guideline outlines the obligations for AFP appointees or authorised drivers when leasing, purchasing, managing and administering the AFP domestic and international vehicle fleet of:

- vehicles used by the AFP to perform specific operational and/or administrative tasks;
- vehicles provided to senior executives.

Reviewed: 4 August 2014

Due: 4 August 2016

Doc No. FN00004

4. AFP Practical Guide on vehicles in an aviation environment

Internal: Practical Guides/Pages/PRA08023

External: N/A

Owner: National Manager – AFP Aviation

Purpose: *This guideline sets out the requirements for Aviation appointees when using AFP vehicles at airports.*

Reviewed: 27 September 2013

Due: 27 September 2015

Doc No. PRA08023

5. Guidelines for use of AFP HQ Pool Vehicles

Internal: Fleet_management/Pages/NationalHQ_pool_cars

External: N/A

Owner: AFP National Procurements & Contracts - Fleet

Purpose: The procurement of pool vehicles for staff working from AFP National Headquarters, including operational and administration vehicles.

Reviewed: Not stated

Due: Not stated

Doc No. N/A

6. Aide Memoire on vehicle collision reports and investigations

Internal: ACT025_AM_Vehicle Collision Reports and Investigations

External: N/A

Owner: Chief Police Officer – ACT Policing via Supt. Traffic Operations

Purpose: This aide memoire sets out:

- the procedures to be adopted by AFP members investigating vehicle collisions that occur in the ACT
- the procedures for the use of the on-line crash reporting system
- the procedures for the receipt of all reported vehicle collisions that occur within the ACT
- the procedures for collisions involving AFP vehicles performing ACT Policing duties within the ACT.

Reviewed: 21 October 2013
Due: 21 October 2015
Doc No. ACT025

7. Aide Memoire on traffic infringement notices (TINs) issued to members on duty (ACT Policing)

Internal: ACT032A AM_TINs Issued to Members On Duty
External: N/A
Owner: Chief Police Officer – ACT Policing via Supt. Traffic Operations
Purpose: *This aide memoire outlines the policies and procedures for seeking withdrawal of traffic infringement notices issued to AFP members conducting official business in the ACT. Members should also have regard to the AFP National Guideline on AFP Vehicles in relation to traffic infringements and vehicle collisions/damage.*
Reviewed: 9 May 2013
Due: 9 May 2015
Doc No. ACT032

8.3 AFP Governance – Framework Review

The Terms of Reference for this paper and the subsequent recommendations as proposed provide an opportunity to reform governance, and to do so by cohesively and coherently merging several existing governance documents.

The present AFP Guideline should apply to AFP employees. The Guideline was written by and for ACT Policing where it had localised effect until 2005-2006 before being adopted across the AFP and elevated to a National Guideline. The content of the policy is entirely ACT Policing-centric despite being reviewed in 2007. The policy does not reflect the operating environment of the AFP nationally.

8.3.1 Options for AFP governance

Consultation with relevant stakeholders has identified two options for reform and re-alignment of existing AFP governance surrounding vehicle use by members:

1. Merging all of the administrative policies and the AFP Aviation operational policy into one centralised National Guideline. This would include *AFP National Guideline on AFP vehicles* and *AFP Practical Guide on vehicles in an aviation environment* policy; or
2. Review the *AFP Guideline* while drawing in peripheral ACT Policing governance including ACT Policing Aide Memoires (AM) namely:
 - *Safe driving program (ACT Policing);*
 - *Vehicle collision reports and investigations; and*
 - *Traffic Infringement Notices (TINs) issued to members on duty (ACT Policing).*

The second option is preferred in terms of the timeliness in which a review can be achieved, and will ensure that ACT Policing retains control of both the review process and ownership of the governance which is appropriate given the volume of use by, and the subject matter expertise which exists within ACT Policing.

Recommendation 17-1:

Noting *Recommendation 4*, as part of a reformed AFP National Guideline, combine the existing AFP National Guideline with the ACT Aide Memoires (3) to form a single AFP National Guideline.

The recommendation therefore is to have an AFP Guideline as a single governance document with the purpose and administrative functions/controls/authorities set out together with the overarching philosophy of risk appreciation in relation to pursuits and urgent duty driving.

Localised governance regarding Urgent Duty Driving and pursuits can be incorporated through annexures specific to each AFP operational jurisdiction. This approach allows the governance for the policy in each jurisdiction to better reflect legislation and policies held by police agencies in each state and territory, and finally provides a truly national AFP Guideline to be established.

This approach provides reliable, clear and well-founded policy for all AFP members regardless of where they are operating or to which AFP portfolio they are deployed. Such a methodology also allows for a degree of autonomy in terms self-management of content by AFP jurisdictions when observing localised laws and reflecting state/territory police service policies, but does not permit deviation from the purpose and philosophy of the AFP National Guideline.

AFP jurisdictional annexures required will include:

Jurisdiction	UDD	Pursuit	Aviation
ACT & Jervis Bay	Yes	Yes	Yes
NSW	Yes	TBA	Yes
VIC	Yes	TBA	Yes
QLD	Yes	TBA	Yes
TAS	Not required	Not required	Not required
SA	Yes	TBA	Yes
NT	Yes	TBA	Yes
WA	Yes	TBA	Yes
EXTERNAL TERRITORIES	Yes	Yes	Yes

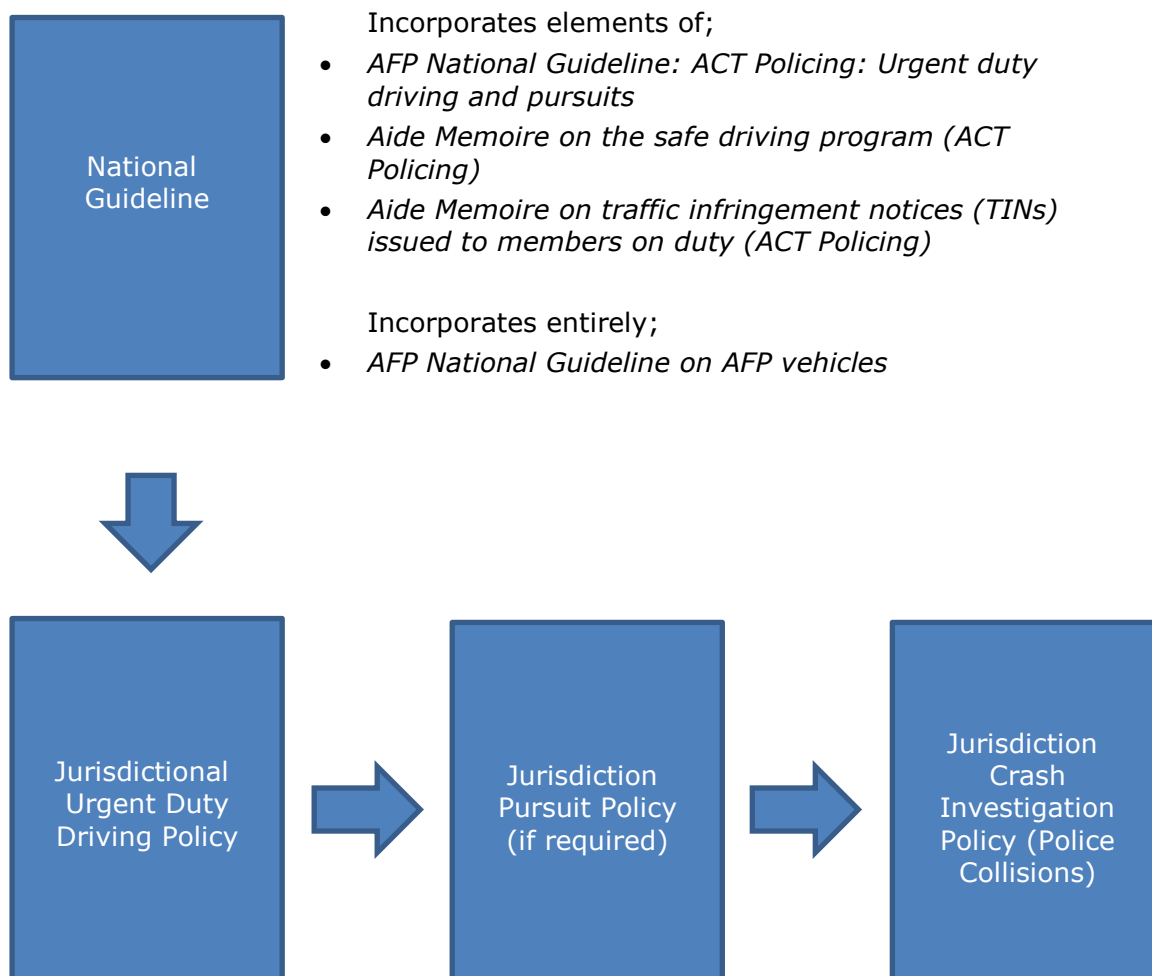
Ownership in terms of writing, maintaining and reviewing an amended AFP National Guideline will remain with the CPOACT, and each AFP jurisdiction would be responsible

for writing and having endorsed those annexures specific to their state/territory of operation.

This method of policy removes ambiguity as to the application of the existing AFP Guideline in jurisdictions outside of the ACT, and thereby serves to better protect the community, members and the organisation.

It is unclear if AFP jurisdictions other than ACT Policing, Jervis Bay and a number of External Territories (community policing portfolios) would require an annexed pursuit policy. This outcome will be considered when an amended National Guideline is drafted.

Proposed Format



Recommendation 17-2:

The AFP National Guideline should be supported by Annexures specific to each of the AFP's (Australian) operational jurisdictions.

Recommendation 17-3:

Formulation and endorsement of the jurisdictional annexures should be the responsibility of each AFP jurisdiction.

9. CONCLUSION

The ongoing debate concerning police pursuits is complex, and typically centres on the difficulties police organisations face when attempting to balance their obligations to apprehend offenders with their responsibility to uphold community safety. This is particularly important given that nationally 37 per cent of pursuit-related deaths are suffered by innocent bystanders.

The current AFP Guideline provides governance by applying obligations owed by police officers to the community and includes clear rules of engagement in the dynamic environment in which pursuits occur. The governance should be continually reviewed to ensure the ongoing needs of the AFP.

The AFP Guideline has been subject to significant scrutiny since it was last reviewed in 2007, including examination and deliberation by the ACT Coroner. The policy provides protection for the community and ensures the safety of all road users, however it should be continually reviewed to ensure compliance with best practice.

There is some activity being undertaken in other policing jurisdictions that could guide any decision to change current ACT Policing practices. This includes the on-going assessment of the Queensland limited pursuit policy and anticipated review by the NSW Police Force of their Safe Driving Policy following a recent coronial inquest (Dillon, 2014).

A review of pursuits conducted in the ACT conducted did not identify any obvious trends or concerns which are inconsistent with those identified in other Australian jurisdictions. Key observations resulting from an analysis of prosecution and court outcomes data suggest that the current prosecution and sanction options for pursuits in the ACT are being applied correctly by both ACT Policing members. While this is the case, there are further options to strengthen the deterrence of pursuits in the ACT.

A comparison of pursuit policies and legislative provisions across Australian jurisdictions reveals that there are some notable differences in how policing organisations choose to address pursuits. ACT Policing could use this as an opportunity to thoroughly review and to measure the impact these approaches are having on the number and outcome of police pursuits.

The opportunity to address the deficiencies in ACT legislation should be taken. The existing legislation in other jurisdictions should be considered for applicability in the ACT. All opportunities should be explored that enable and provide police officers with alternative options to deal with fleeing drivers.

In conclusion, ACT Policing has a framework in place that provides protection for road users during police pursuits. ACT Policing is committed however to continual improvement in operational practices and the recommendations made regarding reforms to the AFP Guideline reflect this.

10. BIBLIOGRAPHY

ACT Policing (2007, August 16).
Executive Steering Committee Minutes - AFP Hub.

Aide Memoire on the safe driving program (ACT Policing)
Australian Federal Police

Australia New Zealand Policing Advisory Agency (n.d.).
Australia and New Zealand Police Pursuit Principles.
<https://www.anzpaa.org.au/corporate-news-and-publications/anzpaa-publications>

Barnes, M. (2010).
Report on Police Pursuits – Policy Recommendations.
Office of the Queensland State Coroner.
http://www.courts.qld.gov.au/_data/assets/pdf_file/0011/86879/cif-police-pursuits-20100331.pdf

Barrett, K. (2007).
ACT Policing Discussion paper – Expansion of vehicle impoundment/forfeiture powers.

Braziel, R, Bell, D and Watsom, G (2015)
A heist gone bad – Critical Incident Review
Police Foundation (USA)
<http://www.policefoundation.org/wp-content/uploads/2015/08/A-Heist-Gone-Bad-Critical-Incident-Review.pdf>

Brown D. (2006).
Traffic Offences & Accidents – 4th Edition.
Lexis Nexis, NY
ISBN: 9780409322767

Cadogan, J. (2010).
Don't get in the way of police pursuits.
<http://autoexpert.com.au/owning-a-car/2010/10/17/dont-get-in-the-way-of-police-pursuits.html?rq=pursuits>

Cadogan, J. (2015).
Why NSW Police Pursuits Are Out of Control
<http://autoexpert.com.au/buying-a-car/why-nsw-police-pursuits-are-out-of-control>

Cameron, A. (2007).
Independent Review of the AFP Urgent Duty Driving and Pursuit Review 2007.
<http://www.justice.act.gov.au/publication/view/116>

Close, L. (2007).
AFP Urgent Duty Driving and Police Pursuit Guideline Review.

Crown Prosecution Service – UK.
Road Traffic Offences - Guidance on Charging Offences arising from Driving Incidents
http://www.cps.gov.uk/legal/p_to_r/road_traffic_offences_guidance_on_prosecuting_cases_of_bad_driving/

Cutrupi, R. (2004).
Police Pursuit ends in tragedy
Canberra Times – 18 April 2004
<http://www.canberratimes.com.au/>

Department of Infrastructure and Regional Development
Bureau of Infrastructure, Transport and Regional Economics (BITRE)
Road Trauma Australia: 2014 Statistical Summary
https://bitre.gov.au/publications/ongoing/files/Road_trauma_Australia_2014_statistical_summary_N_ISSN.pdf

Dillon, H. (2014).
Inquest into the death of Hamish Raj.
<http://davidshoebridge.org.au/wp-content/uploads/2014/04/140407-Coronial-Inquest-Hamish-RAJ-Finding-Redacted-3.pdf>

Dingwall, P. (2014).
Inquest into the death of Brody Oppelaar, Justin Karl Williams, Scott Raymond Oppelaar and Samantha Leanne Ford.
<https://cdn.justice.act.gov.au/resources/uploads/Magistrates/Oppelaar1.pdf>

Eisenberg, C. (2009)
Law Enforcement Vehicle Pursuits – Policies, Training, Tactics and Technology
<https://www.fdle.state.fl.us/Content/getdoc/f2088557-2016-418e-8f5e-8f6e87635200/eisenberg,-clyde-paper-pdf.aspx>

Fryar, K. (2007).
Inquest into the death of Clea Kathleen Rose.
http://cdn.justice.act.gov.au/resources/uploads/Magistrates/s_Findings_death_of_Clea_Rose.pdf

Gaynor v Allen (1959) 2 All ER 644
<http://swarb.co.uk/lisc/Polic19301959.php>

Goldflam, R. (2012).
Speed Kills
Criminal Lawyers Association Northern Territory - Law Society NT
<http://www.austlii.edu.au/au/journals/BalJINTLawSoc/2013/2.pdf>

Hoffman, G. (2003).
Police Pursuits: A law enforcement and public safety issue for Queensland.
Crime & Misconduct Commission QLD
ISBN: 1 876986 17 4
www.ccc.qld.gov.au/research-and.../police/police-pursuits.jpfd

Homel, R. (1988).
Policing and punishing the drinking driver – A study of general and specific deterrence.
Springer-Verlag NY
ISBN 0-387-96715-X

Howells, D.G. (2000).

Patent - Vehicle Immobilisation System WO 2000035724 A1

<http://www.google.com/patents/WO2000035724A1?cl=en>

Horan v Smith, Supreme Court ACT, 23 September 1986

Sec 211(1) Motor Traffic Ordinance 1936

[http://www.austlii.edu.au/cgi-](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/act/ACTSC/1986/91.html?stem=0&synonyms=0&query=horan)

[bin/sinodisp/au/cases/act/ACTSC/1986/91.html?stem=0&synonyms=0&query=horan](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/act/ACTSC/1986/91.html?stem=0&synonyms=0&query=horan)

Human Rights Bill 2003 – Explanatory Statement

http://www.legislation.act.gov.au/es/db_8294/20031120-9669/pdf/db_8294.pdf

Innes v Weate 1984 Tas R14

http://test.justice.tas.gov.au/supremecourt/decisions/judgments/1984_judgments?SQ_D

[ESIGN_NAME=printer_friendly](http://test.justice.tas.gov.au/supremecourt/decisions/judgments/1984_judgments?SQ_D)

Kerin, L. and Herbert, B. (2010).

Banning police pursuits not the answer

ABC News 22 March 2010.

<http://www.abc.net.au/news/2010-03-22/banning-police-pursuits-not-the-answer/375414>

Lalor, G. (2004).

Inquest into the death of Benjamin Hayes

http://www.courts.act.gov.au/magistrates/courts/coroners_court

Lyneham, M. & Hewitt-Rau, A. (2013).

Motor vehicle pursuit-related fatalities in Australia, 2000-2011.

<http://www.aic.gov.au/publications/current%20series/tandi/441-460/tandi452.html>

MacMahon, P. (2015).

Inquest into the death of Skye Sassine.

http://www.coroners.justice.nsw.gov.au/Documents/Findings%20-%20Skye%20Sassine%202009-474054_2015_05_15_09_20_59_604.pdf

Macken, M. (2010).

Crimes Amendment (Police Pursuits) Bill 2010.

<http://www.lawsociety.com.au/cs/groups/public/documents/internetpolycysubmissions/066148.pdf>

Ministerial Direction to ACT Policing per s.6 *Policing Agreement Special Areas of Focus*

<http://www.police.act.gov.au/~media/act/pdf/ministerial-direction-2013-2014.ashx>

Mundarra Smith v R [2001] HCA 50; 206 CLR 650; 181 ALR 354; 75 ALJR 1398 (16 August 2001)

http://www.austlii.edu.au/au/cases/cth/high_ct/2001/50.html

Norman v Spiers [2005] ACTCA 14 (13 April 2005)

[http://www.austlii.edu.au/cgi-](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/act/ACTCA/2005/14.html?stem=0&synonyms=0&query=spiers)

[bin/sinodisp/au/cases/act/ACTCA/2005/14.html?stem=0&synonyms=0&query=spiers](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/act/ACTCA/2005/14.html?stem=0&synonyms=0&query=spiers)

Olle, J. (2014).

Finding into death with Inquest (Stage One).

Inquest into the death of Sarah Louise Booth.

http://www.coronerscourt.vic.gov.au/resources/71dbacd0-6d4a-4bf3-8466-9591bfa838e7/sarahlouisebooth_497406%28stage+one%29.pdf

Olle, J. (2014).

Finding into death with Inquest (Stage Two).

Police Pursuits – Comments and Recommendations.

http://www.coronerscourt.vic.gov.au/resources/5ddff2bf-f7a0-4a4d-b871-f9c3a26dfe0a/sarahlouisebooth_497406%28stage+two%29.pdf

Palmer, D. (2013).

Hot pursuit': law enforcement practice and the public interest

Alternative Law Journal Vol 28(1) 2003 - Practising law in the public interest

<http://dro.deakin.edu.au/eserv/DU:30001906/palmer-hotpursuit-post-2003.pdf>

Rattenbury, S. (2014).

Hansard transcript from 8 May 2014.

<http://www.hansard.act.gov.au/hansard/2014/week04/1261.htm>

Rattenbury, S. (2011).

A community discussion paper on police car chases.

<http://act.greens.org.au/sites/greens.org.au/files/A%20community%20discussion%20paper%20on%20police%20car%20chases.pdf>

R v Camilleri [2001] VSCA 14 (7 March 2001).

Supreme Court of Victoria – Court of Appeal

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSCA/2001/14.html>

StarChase Pursuit Management Technology

<http://www.starchase.com/>

Stafford, M. and Warr, M. (1993).

A Reconceptualization of General and Specific Deterrence

Journal of Research in Crime and Delinquency 1993 30: 123

<http://jrc.sagepub.com/content/30/2/123>

Victoria Police (2012).

Evaluation of pursuits final report. Inspectorate review 20/2011.

http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=80877

Victoria Police (2015).

Police finalise new pursuit policy.

Victoria Police News (13 July 2015).

<http://www.vicpolice.com.au/news/7202-police-finalise-new-pursuit-policy.html>

Walshe, K. (2012).

A ban on police pursuits would make criminals the winners.

Sydney Morning Herald (12 January 2012).

<http://www.smh.com.au/federal-politics/a-ban-on-police-pursuits-would-make-criminals-the-winners-20120111-1pveq.html>

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A report for the Chief Police Officer for the ACT*

- Ms Linda Cavanagh
- Sergeant Craig McPherson

11.2 Approval

Name	Position, Organisation	Date
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12. ANNEXURES

12.1 ATTACHMENT A

AFP National Guideline: ACT Policing: Urgent duty driving and pursuits

1. Disclosure and compliance

This document is classified **UNCLASSIFIED** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the AFP National Guideline on disclosure of information.

Compliance

This instrument is part of the AFP's professional standards framework. The AFP Commissioner's Order on Professional Standards (CO2) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

This document has effect from 7 December 2007.

2. Acronyms

AFP	Australian Federal Police
CAD	Computer Aided Dispatch
CPOACT	Chief Police Officer for the Australian Capital Territory
PPRC	Police Pursuit Review Committee
PROMIS	Police Real-Time Online Information System

3. Definitions

AFP Vehicle - includes any Commonwealth owned, leased or hired vehicle and includes any vehicle currently in the possession of the AFP that is used by AFP Employees in the course of their duties.

Approved Course - means a course for members approved by the Chief Police Officer (CPO) ACT Policing.

Approved Member - means a member who has successfully completed an approved course.

Cross Border Pursuit - means where a police officer is engaged in a pursuit that moves from one jurisdiction into another jurisdiction and there is an intention to continue the pursuit.

Member - has the same meaning as is contained in the [Australian Federal Police Act 1979](#).

Police Pursuit Review Committee - means a committee formed to review circumstances and results of all police pursuits, and will consist of the Superintendents of Traffic Operations, Prosecution and Judicial Support and Police Communications.

Police Vehicle - means, for the purposes of the Australian Road Rules, any vehicle driven by a person who is a police officer and is driving the vehicle in the course of their duties as a police officer.

Primary Unit - means the police vehicle that takes up a position immediately to the rear of the pursued vehicle. Usually this will be the vehicle initiating the pursuit.

Pursuit - means an attempt by a police officer driving a police vehicle to stop a person driving another motor vehicle who, by their actions, has indicated an intention to avoid interception. These actions can include high speed driving, evasive tactics, or wilfully disobeying a direction by a member to stop. This definition includes pursuits at all speeds and over any distance and does not necessarily involve speeds in excess of prescribed speed limits.

Pursuit Controller - means a member performing the duties of team leader, Police Communications at the time of notification of the pursuit.

Pursuit Driver - means a member who is the holder of a current Class 6 AFP Driving Permit.

Pursuit Rider - means a member who is the holder of a current Class 5B AFP Driving Permit.

Pursuit Vehicle - means a motor vehicle approved for use as a Traffic Operations pursuit vehicle by the CPO or a delegate.

Routine Traffic Stop - means the interception of a vehicle for the purpose of law enforcement, and includes the period from the time the suspect vehicle is first observed by the member who forms the intent to stop the vehicle, and ends when the suspect vehicle stops where and when requested by the member, or the situation escalates to a pursuit.

Secondary Unit - means a police vehicle assisting in a pursuit, usually by following to the rear of the primary unit.

Siren - for the purposes of the Australian Road Rules - means an alarm.

Stop Sticks - means the type of tyre deflation device in use by ACT Policing.

Terminate - means to immediately cease the activity and, in the case of a pursuit, cease the pursuit and stop following the offending vehicle and return to the legal speed limit, stopping the police vehicle and turning off all warning devices as soon as possible and safe to do so. This applies to all police vehicles whether directly or indirectly involved in the incident.

Tyre Deflation Device - means a device approved for use by the CPO, which causes the deflation of tyres of a vehicle when driven over.

Urgent Duty Driving - means driving a police vehicle in response to a specific incident or emergency that would ordinarily constitute an offence against the Australian Road Rules in that jurisdiction.

Warning Device - means approved flashing blue and/or red lights and/or sirens fitted to a police vehicle.

4. Authority

This practical guide was created by the Chief Police Officer using power under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C of the Act.

5. Introduction

This National Guideline outlines the policies and procedures to balance accountability with empowerment and initiate, facilitate, and consolidate corporate and individual decision making processes in relation to the performance of Urgent Duty Driving and Pursuits.

6. Policy

There are serious safety risks associated with police officers driving at speeds in excess of prescribed speed limits, and with the pursuit of drivers who refuse to comply with a direction to stop. The sworn duty of a police officer to protect life and property will always have primacy over the need to apprehend offenders, especially when the offence involved is relatively minor, or where there are safer options other than immediate apprehension.

7. Compliance with laws and guidelines

- a. This National Guideline is based on Rule 305 of the [Australian Road Rules](#) and sets out the considerations and procedures to be adopted by members performing duties that involve urgent duty driving, pursuits or cross border pursuits which may occur on roads, road related areas or any other place.
- b. The risks involved in these activities require the demonstration of a high standard of professionalism and care and do not justify placing police or the community at unreasonable risk.
- c. Members of ACT Policing are expected to comply with applicable road rules in the course of their duties. Departure from those rules is only permitted where it can be justified with reference to the duties being undertaken at the time.
- d. Officers who choose not to commence a pursuit or to abandon one that has commenced will be fully supported by the AFP, even if it results in an offender escaping immediate detention or from being prosecuted.
- e. The performance of urgent duty driving or pursuits will be in accordance with the provisions of this National Guideline. Compliance with this guideline is required by the Australian Federal Police Commissioner's Order on Professional Standards (CO2) An AFP employee or special member may, after having had regard to a National Guideline, depart from the provisions of the guideline, but must be able to demonstrate that the departure was reasonable and justified in the given circumstances. Unless prevented by circumstances, before departing from a National Guideline, an AFP employee or special member should discuss the proposed departure with his or her supervisor with a view to determining whether departure from a National Guideline is the appropriate course in the circumstances.

8. Exemptions - Australian Road Rules

Rule 305 - Exemptions for Drivers of Police Vehicles

A provision of the [Australian Road Rules](#) does not apply to the driver of a police vehicle if:

- a. A provision of the [Australian Road Rules](#) does not apply to the driver of a police vehicle if:
 - i. In the circumstances:
 - The driver is taking **reasonable** care; and
 - It is **reasonable** that the provision should not apply; and
 - ii. if the vehicle is a motor vehicle that is moving - the vehicle is displaying a blue or red flashing light or sounding an alarm.
- b. Sub rule (a) (ii) does not apply to the driver if, in the circumstances, it is **reasonable**:
 - i. Not to display the light or sound the alarm or
 - ii. For the vehicle not to be fitted or equipped with a blue or red flashing light or an alarm.

The laws relating to exemptions for police vehicles are found in the *Australian Road Rules*. It should be noted that these exemptions only apply to the *Australian Road Rules*.

- c. This exemption does not preclude the requirement to drive at all times with due care and attention and with reasonable consideration for other road users. Police officers have a duty of care towards the public and their fellow officers which also extends to the drivers and occupants of the vehicles police are endeavouring to intercept.
- d. Drivers of police vehicles are **not** exempt from prosecution under Acts such as the [Road Transport \(Safety and Traffic Management\) Act 1999](#), for offences such as driving in a manner/speed dangerous to the public, negligent driving, or from civil litigation.
- e. Drivers of police vehicles are **not** exempt from prosecution for offences of culpable driving and manslaughter under the provisions of the *Crimes Act 1900*.

9. Vehicle classification

- a. **Category 1:** Most suitable for **Pursuit** and **Urgent Duty** driving.
- b. **Category 2:** Suitable for **Pursuit** and **Urgent Duty** driving.
- c. **Category 3:** Least suitable for **Pursuit** and **Urgent Duty** driving.
- d. **Category 4:** **Not** an authorised vehicle for **Pursuit** but may be used for **Urgent Duty** driving where such response is justifiable and reasonable.
- e. **Category 5:** **Not** an authorised vehicle for **Pursuit** or **Urgent Duty** driving. A Category 5 vehicle will **not** exceed a posted speed limit.
- f. All vehicles which are permitted to be used for Urgent Duty Driving or Pursuits will be marked with their classification.

10. Category classification

- a. In all cases, a four wheel vehicle will take precedence over a motor cycle.

Category 1 vehicles

- b. A motor vehicle approved for use as a Traffic Operations pursuit vehicle by the CPO or a delegate which is:
 - i. A pursuit vehicle, permanently marked as a police vehicle, fitted with fixed warning devices, and driven by a qualified pursuit driver. (When driven by a member who is not a qualified pursuit driver the vehicle will be downgraded to Category 2.)

- c. Category 1 vehicles will take precedence over Category 2 vehicles.

Category 2 vehicles

- d. A motor vehicle or motorcycle approved for use as a Traffic Operations pursuit vehicle by the CPO or a delegate which is:
 - i. A pursuit motorcycle, permanently marked as a police motorcycle, fitted with fixed warning devices
or
 - ii. An unmarked pursuit vehicle, fitted with approved warning devices (which includes a portable roof light or covert warning lights) which will be activated for the duration of the urgent duty driving or pursuit, and driven by a qualified pursuit driver. (When driven by a member who is not a qualified pursuit driver/rider the vehicle will be downgraded to Category 3.)
- e. A motor vehicle (not including Category 3, 4 and 5 vehicles) approved for use as a patrol vehicle by the CPO or a delegate which is:
 - i. A police patrol sedan or station wagon, permanently marked as a police vehicle, fitted with fixed warning devices.
- f. Category 2 vehicles will take precedence over Category 3 vehicles.

Category 3 vehicles

- g. A motor vehicle, including a two-wheel drive station sedan, approved for use as a patrol vehicle by the CPO or a delegate which is:
 - i. An unmarked sedan or station wagon, fitted with approved warning devices (which includes a portable roof light or covert warning lights) which will be activated for the duration of the urgent duty driving or pursuit.
- h. Category 3 vehicles will take precedence over Category 4 vehicles.

Category 4 vehicles

- i. A van, passenger van or light rigid vehicle approved for use as a Traffic Operations vehicle by the CPO or a delegate which is:
 - i. Permanently marked as a police vehicle, fitted with fixed warning devices which will be activated for the duration of the urgent duty driving.
- j. A van, passenger van or light rigid vehicle approved for use as a patrol vehicle by the CPO or a delegate which is:
 - i. Permanently marked as a police vehicle, fitted with fixed warning devices which will be activated for the duration of the urgent duty driving.
- k. A caged vehicle, permanently marked as a police vehicle, fitted with fixed warning devices which will be activated for the duration of the urgent duty driving. (Mazda Bravo caged vehicles are not to exceed posted speed limits under any circumstances).
- l. A four wheel drive vehicle (not approved as a pursuit vehicle under Category 1 or Category 2), fitted with fixed warning devices which will be activated for the duration of the urgent duty driving, whether permanently marked as a police vehicle or unmarked.
- m. A medium or heavy rigid vehicle fitted with approved warning devices (which include a portable roof light or covert warning lights) which will be activated for the duration of the urgent duty driving.
- n. An unmarked vehicle not fitted with warning devices.
- o. A motorcycle designed for use as a trail bike.
- p. A vehicle not displaying a classification label.

Category 5 vehicles

- q. A bus.
- r. A vehicle towing a caravan or trailer, or carrying a load, whether it be internal or external to the vehicle.

11. Licence classifications

- a. The following table includes AFP Driving Permit Classifications and a comparison with NSW Police Permit Classifications for utilisation in cross border pursuit situations.

AFP Class	AFP Permit Classification	NSW Police Permit Classification
Class 1	Passenger cars (Restricted)	Bronze
Class 2	Operational Police vehicles up to 4.5 tonnes, carrying no more than 12 adults (restricted)	Bronze
Class 2A	Surveillance	Silver
Class 2B	V.I.P. Escort vehicle	Silver
Class 2C	Patrol Cars (including Urgent Duty Driving)	Silver
Class 2D	Urgent Duty Driving	Silver
Class 3	Four-Wheel-Drive (up to 4.5 tonnes)	Silver
Class 3A	Four-Wheel-Drive and recovery (up to 4.5 tonnes)	Silver
Class 4	Heavy vehicles (exceeding 4.5 tonnes) (restricted)	N/A
Class 4A	Heavy Four-Wheel-Drive (exceeding 4.5 tonnes) (restricted)	N/A
Class 4B	Articulated vehicle (restricted)	N/A
Class 5	Motorcycle (restricted)	N/A
Class 5A	Off Road motorcycle (restricted)	N/A
Class 5B	Advanced motorcycle	Silver
Class 6	Advanced motor vehicle	Silver

- b. The NSW Safe Driving Policy stipulates that a member must hold a Silver permit classification to participate in Urgent Duty Driving and Pursuits.

12. Vehicle inspections

- a. The team leader of any member involved in an urgent duty driving or pursuit incident where:
 - i. The vehicle was driven at a high speed for an extended period
 - ii. Heavy braking occurred during the pursuitor

- iii. rough or irregular road surfaces were traversed
will consider a mechanical inspection prior to the vehicle being returned to service.
- b. The team leader will ensure that:
 - i. A record is made in the vehicle log of any mechanical inspection undertaken
 - ii. A case note entry is made within the relevant PROMIS case indicating if a vehicle inspection was undertaken or not and all relevant details.

13. Vehicle crash/injury

- a. Where, as a result of an urgent duty driving or pursuit incident, a vehicle (police vehicle or otherwise) is damaged or a person is injured, the provisions of the following AFP governance documents will be applied:
 - i. In the event of a serious injury or death:
 - AFP National Guideline on the Use of Prohibited Drugs, Attachment 'C'
 - ii. ACT Policing Practical Guides:
 - ACT Policing: Practical Guide: Deaths
 - ACT Policing: Practical Guide: Management of Major Incidents - Police Involvement where Death or Serious Injury Occurs
 - ACT Policing: Practical Guide: Notification Requirements On Call Duty Superintendent and On Call Duty Commander
 - ACT Policing: Practical Guide: Persons in Custody
 - ACT Policing: Practical Guide: Vehicle Collisions Reports and Investigation

14. Urgent duty driving

- a. Members will not undertake urgent duty driving unless they possess a current AFP Driving Permit that includes either the classification of 'urgent duty driving', 'advanced motorcycle' or 'advanced motor vehicle'.
- b. Urgent duty driving may only be undertaken:
 - i. In response to a specific incident or emergency which justifies prompt action
 - ii. When the circumstances of the incident are sufficiently serious to make that conduct reasonable.
- c. The performance of urgent duty driving will be notified to Police Communications (with the exception of that associated with a routine traffic stop) at the first available opportunity.
- d. Members involved in urgent duty driving will use warning devices unless it is reasonable not to do so, in accordance with Rule 305 of the Australian Road Rules.
- e. Members involved in an urgent duty driving incident will, when approaching any intersection, slow their vehicle and only enter the intersection when it is safe to do so. Where an intersection is controlled by any traffic control device, including red traffic lights or stop signs facing the driver, the driver must consider whether it is necessary to bring the police vehicle to a complete stop in order to safely enter the intersection.
- f. Drivers of police vehicles are not to engage in urgent duty driving if there are persons, and in particular persons in custody, other than police officers travelling in the police vehicle unless:
 - i. Those persons are able to safely exit the vehicle
 - ii. The safety of those persons is not compromised
or
 - iii. There is no other reasonable alternative in the circumstances.

The provisions of (f) above do not relate to a pursuit, which is referred to at Section 21.

15. Driver responsibilities

- a. The driver of a police vehicle undertaking urgent duty driving will, prior to commencement and during an urgent duty driving incident, consider whether Rule 305 of the *Australian Road Rules* apply. If the driver can justify Urgent Duty Driving, the following will be taken into account:
 - i. The classification of the police vehicle in accordance with this National Guideline
 - ii. The proximity of the police vehicle to the incident
 - iii. The risks (risk assessment) associated with the activity
 - iv. The real or potential danger to police, members of the public or people in the subject vehicle
 - v. The volume of road and pedestrian traffic in the area
 - vi. The performance capabilities of the police vehicle
 - vii. The experience, competency and AFP licence classification of the driver
 - viii. The nature and seriousness of the event precipitating the need for urgent duty driving
 - ix. weather and road surface conditions and features of the locality.

16. Passenger responsibilities

- a. A member who is a passenger in a police vehicle undertaking urgent duty driving will, where possible:
 - i. Assist with the risk assessment and notify the driver of perceived/identified risks to the safety of the occupants of the police vehicle or members of the public
 - ii. Assist with radio communication as required
 - iii. May, when senior in rank or experience to the driver, direct termination of the urgent duty driving when the purpose for the driving is outweighed by one or more of the criteria referred to in Section 14 above.

17. Police Communications responsibilities

- a. The Police Communications team leader and dispatcher will, during an urgent duty driving incident which has been brought to their attention:
 - i. Monitor the urgent duty driving
 - ii. Report all relevant information to the driver's team leader
 - iii. Actively consider initiatives which will lead to a termination of the urgent duty driving at the earliest opportunity
 - iv. Record full details of any occurrence where urgent duty driving is undertaken
 - v. Where the purpose of the urgent duty driving is outweighed by any one or more of the criteria referred to in Section 15 above, direct the termination of the urgent duty driving
 - vi. Ensure a response to any direction to terminate any urgent duty driving incident is recorded in the relevant CAD log.
- b. The Superintendent in charge of Police Communications will ensure appropriate induction and ongoing training for police communication personnel in relation to urgent duty driving and police pursuits.

18. Termination/modification of urgent duty driving

- a. Where the purpose for urgent duty driving is outweighed by any one or more of the criteria referred to in Section 15 above, the member who is the driver of the vehicle

- involved in the urgent duty driving incident will terminate/modify that manner of driving.
- b. A direction to terminate an urgent duty driving situation may be given by any one of the following members who are aware of the incident:
 - i. A member in the police vehicle who is senior in rank or experience to the driver
 - ii. The team leader of the driver of the vehicle involved in an urgent duty driving incident
 - iii. A member performing the duties of a Superintendent or above
 - iv. The team leader of Police Communications who is monitoring and oversighting the incident.
 - c. If any member considers that the urgent driving incident should be continued and the team leader of Police Communications monitoring the incident disagrees as to continuation, the team leader Police Communications has the authority to direct that the urgent duty driving be terminated.
 - d. A member who is directed to terminate urgent duty driving will acknowledge the direction, cease the activity immediately, and return to driving within the provisions of the *Australian Road Rules*.

19. Pursuit management and coordination

- a. The responsibility for pursuit policy rests with the CPO. The responsibility for the control and coordination of pursuits rests with the Pursuit Controller.
- b. The primary responsibility for the initiation and conduct of a pursuit rests with the member driving the police vehicle. That member will:
 - i. Drive in a manner that prioritises the safety of the police and public
 - ii. Comply with any directions of the Pursuit Controller
 - iii. Subject to this National Guideline, comply with the directions of a senior member.
- c. The Pursuit Controller may terminate a pursuit against the advice of the member driving the police vehicle. The member will terminate the pursuit immediately if directed to do so.
- d. The Pursuit Controller cannot direct a member to continue a pursuit against that member's preference to terminate.

20. Pursuit driving

- a. Members involved in a pursuit will use warning devices for the duration of the pursuit.
- b. Members involved in a pursuit will, when approaching any intersection, slow their vehicle and only enter the intersection when it is safe to do so. Where an intersection is controlled by any traffic control device, including red traffic lights or stop signs facing the driver, the driver must consider whether it is necessary to bring the police vehicle to a complete stop in order to safely enter the intersection.
- c. Where possible, posted School Zone speed limits should be complied with.

In considering 'where possible' members must take into account that there is a heightened risk for any pursuits conducted in and around school zones and need to be alert and mindful of this when undertaking a pursuit, particularly during the times that school zones are in operation.

21. Roles and responsibilities

Pursuit Controller

- a. The Pursuit Controller will immediately assume a control and coordination role for the duration of a pursuit and any subsequent deployment of a tyre deflation device. In particular, the Pursuit Controller will undertake the following:
 - i. An immediate assessment of the dangers involved in allowing the pursuit to continue
 - ii. Regular assessments and evaluation of issues that may impact on the pursuit and any consequences as a result of it
 - iii. Ascertain if pursuit qualified Traffic Operations members are available and direct those members to become the primary unit as soon as practicable. Members under such direction will drive in accordance with the provisions relating to urgent duty driving until they take over the pursuit
 - iv. Re-affirm the primary pursuit vehicle and advise other members not to specifically engage in the pursuit
 - v. Where a decision is taken to deploy a device, other patrols should be utilised to direct traffic away from the deployment site
 - vi. Authorise an approved member as the deployment officer
 - vii. Advise all members of the authorisation for the use of a tyre deflation device
 - viii. Continue co-ordination of the pursuit
 - ix. Advise other emergency service organisations of the tyre deflation device deployment site.
- b. At the conclusion of a pursuit the Pursuit Controller will ensure that the PROMIS and CAD recording responsibilities, as outlined in Section 25, are completed prior to ceasing duty.

Police communications

- c. A dispatcher who is made aware of a pursuit will immediately:
 - i. Notify the Pursuit Controller
 - ii. Broadcast a safety reminder in the form of:
"If there is unjustified risk to any person you are to terminate the pursuit immediately. Do you understand?"
- d. A dispatcher will provide the Pursuit Controller with all relevant information surrounding the pursuit, which will include those details referred to in Section 21.
- e. Police Communications, in consultation with the Pursuit Controller, may approve and assign additional backup or support vehicles to assist the primary and secondary pursuit vehicles based upon an analysis of:
 - i. The nature of the offence for which the pursuit was commenced
 - ii. The number of offenders and any known propensity for violence
 - iii. The number of members in primary and secondary pursuit vehicles
 - iv. Any damage or injuries to the primary or secondary pursuit vehicles or members
 - v. The number of members necessary to safely effect an arrest at the conclusion of the pursuit
 - vi. Any other facts that would justify adding more than the primary and secondary pursuit vehicles.
- f. Only members of Police Communications will arrange for other patrols to assist with a pursuit.
- g. Police Communications will stand down all other members on the relevant channel unless the communication is urgent.

Primary vehicle

- h. Prior to commencing, and during a pursuit, members will assess, and continue to re-assess the risks to members of the public, themselves and those persons in the subject vehicle. These risks include, but are not limited to:
 - i. The real or potential danger to police, members of the public or people in the suspect vehicle (for example, overtaking into oncoming traffic, disobeying traffic signals, crossing intersections at speed)
 - ii. The volume of road and pedestrian traffic in the area
 - iii. The weather and road surface conditions, and features of the particular locality of the pursuit
 - iv. The nature and comparative seriousness of the offence/matter
 - v. Whether there are other reasonable means available for police to identify or apprehend the relevant people
 - vi. Whether it would be practicable to terminate the pursuit with the use of tyre deflation devices
 - vii. The distance between the police vehicle and the other vehicle is so great that further pursuit is futile
 - viii. The speed of the subject vehicle involved
 - ix. The experience/competency of the driver
 - x. The performance capabilities of the police vehicle
 - xi. The classification of the police vehicle in accordance with this National Guideline
 - xii. The provisions providing exemption for urgent duty driving within Rule 305 of the *Australian Road Rules* as outlined in Section 8.
- i. When a pursuit is commenced, a member in the vehicle will notify Police Communications of:
 - i. The reason for the pursuit
 - ii. The vehicle description and registration number if available
 - iii. The location and direction of the offending vehicle
 - iv. The progress of the pursuit (at regular intervals)
 - v. The speed of the offending vehicle (at regular intervals)
 - vi. The relevant speed limit
 - vii. Traffic conditions
 - viii. The category class of the member's vehicle
 - ix. The driving qualifications of the member.
- j. No more than two police vehicles (a primary unit and a secondary unit) will become actively involved in a pursuit, unless directed to do so by Police Communications.
- k. All vehicles involved in a pursuit will maintain a safe distance between each vehicle.
- l. Where a vehicle commences a pursuit, that vehicle will relinquish the primary response vehicle role immediately upon participation of a vehicle which falls into a higher vehicle classification.
- m. Following the conclusion of a pursuit the driver of the primary vehicle, or other nominated member, will ensure that the PROMIS recording responsibilities, as outlined at Section 25, are completed prior to ceasing duty.

Passenger (primary vehicle)

- n. A member who is a passenger in a police vehicle in a pursuit will, where possible:
 - i. Assist with the risk assessment and notify the driver of perceived/identified risks to the safety of the occupants of the police vehicle or members of the public
 - ii. Assist with radio communication as required
 - iii. May, when senior in rank or experience to the driver, direct termination of the pursuit when the purpose for the driving is outweighed by one or more of the criteria referred to in Section 15 above.

Secondary vehicle (driver and/or passenger)

- o. The driver and/or passenger of a secondary vehicle will:
 - i. Notify Police Communications they have taken up position as the secondary vehicle
 - ii. Maintain a position to the rear of the primary vehicle
 - iii. If not provided by the primary unit, the speed, direction, environmental conditions, vehicle description and any other relevant information
 - iv. Continue the pursuit until replaced as the secondary vehicle, the vehicle is safely intercepted, or the pursuit is terminated or otherwise resolved
 - v. Continually assess the risks as outlined in Section 21
 - vi. If at any time the risk outweighs the objective, recommend to the Pursuit Controller that the pursuit be terminated or direct the pursuit to be terminated
 - vii. Maintain constant radio Police Communications if the primary vehicle is unable to do so
 - viii. Maintain constant radio communications if requested to do so
 - ix. Upon termination of the pursuit, acknowledge the directive and advise of the last known location, direction and any other identifying details of the offending vehicle being followed.

Team Leaders (non police communications)

- p. The team leader of a member/s involved in a pursuit will:
 - i. Continually monitor and assess the risks of the pursuit (regardless of where the pursuit commenced)
 - ii. If at any time the risks outweigh the objective, direct that the pursuit be terminated in accordance with Section 24
 - iii. Ensure the members involved comply with this National Guideline (including debrief and reporting requirements)
 - iv. Conduct a debrief of the incident with the member/s before the end of the member/s shift
 - v. Provide advice to the Pursuit Controller on any other matter relevant to the pursuit.

Non-involved police vehicles

- q. Members not involved in a pursuit will:
 - i. Abstain from any non-pursuit related or non-urgent radio communication
 - ii. If in the immediate area and able to assist, notify Police Communications and await instructions
 - iii. Not become involved in the pursuit unless directed and follow any direction given by Police Communications.

22. Police vehicle occupants

- a. An AFP vehicle will not become involved in a pursuit where the vehicle contains a person who is not a sworn police member. Where there is a second member in the vehicle their responsibilities include assistance in the risk assessment process, radio communication and advice to the driver of environmental and other considerations relevant to the activity as outlined at Section 21.

23. Overtaking

- a. Unless extreme circumstances exist, police vehicles will not:
 - i. Travel parallel to the pursuit on the same or adjacent streets
 - ii. Draw level with or attempt to overtake the pursued vehicle (this applies equally to primary, secondary and all other police vehicles).

24. Termination of pursuit

- a. Where the value of apprehending an offender in a pursuit, is outweighed by any one or more of the following criteria, the member who is the driver of the vehicle involved in the pursuit will terminate that pursuit:
 - a. The real or potential danger to police, members of the public or people in the suspect vehicle (for example, overtaking into oncoming traffic, disobeying traffic signals, crossing intersections at speed)
 - ii. The volume of road and pedestrian traffic in the area
 - iii. The weather and road surface conditions, and features of the particular locality of the pursuit
 - iv. The nature and comparative seriousness of the offence/matter
 - v. Whether there are other reasonable means available for police to identify or apprehend the relevant people
 - vi. The offenders identity is established to a point where later apprehension is likely and there is no immediate threat to public safety
 - vii. The distance between the police vehicle and the other vehicle is so great that further pursuit is futile
 - viii. The speed of the subject vehicle involved
 - ix. The experience/competency of the driver
 - x. The performance capabilities of the police vehicle
 - xi. The provisions providing exemption for urgent duty driving within Rule 305 of the Australian Road Rules no longer apply
 - xii. Where there are malfunctions with police equipment and/or serious damage to the police vehicle involved in a pursuit which makes the continued operation of the pursuit hazardous
 - xiii. The vehicles in the pursuit lose radio contact with ACT Police Communications.
- b. A direction to terminate a pursuit may be given by one of the following members:
 - i. A member in the police vehicle who is senior in rank or experience to the driver
 - ii. The team leader of the driver of the vehicle involved in the pursuit
 - iii. A member performing the duties of a Superintendent or above
 - iv. The Pursuit Controller.
- c. If any member considers that the pursuit should be continued and the Pursuit Controller monitoring the pursuit disagrees as to continuation, the Pursuit Controller has the authority to direct that the pursuit be terminated.
- d. A pursuit will not be re-initiated by any other police vehicle unless approval is first granted by the Pursuit Controller. It should be noted that this approval will only be considered if pertinent information is received which would sufficiently alter the circumstances of the original response.

Terminate - means to immediately cease the activity and, in the case of a pursuit, cease the pursuit and stop following the offending vehicle and return to the legal speed limit, stopping the police vehicle completely and turning off all warning devices as soon as possible and safe to do so. This applies to all police vehicles whether directly or indirectly involved in the incident.

- e. Upon termination of a pursuit, members will:
 - i. Notify police communications immediately that the pursuit has been terminated and the reasons for termination
 - ii. Carry out a safety check of the police vehicle when safe to do so. This check will include:
 - Leaving the engine running to continue engine cooling
 - A visual inspection of the engine bay for excessive coolant loss
 - A visual inspection of the tyres and rims of the vehicle for damage
 - Visual inspection of the body of the vehicle, particularly if contact with another vehicle or object may have occurred during the pursuit.

Physical termination of pursuit

- f. Members engaged in a pursuit will not attempt to forcibly stop another vehicle, other than by the use of a tyre deflation device, unless immediate intervention is necessary to prevent imminent loss of life or serious injury.
- g. Road blocks (with the exception of the deployment of tyre deflation devices) will not be used without the express permission of a member performing the duties of a Superintendent or above, and then only as a last resort to prevent loss of life or serious injury.
- h. Members will not deploy tyre deflation devices in a pursuit without the authority of the Pursuit Controller.

25. PROMIS and CAD - recording of incident

- a. At the commencement of a pursuit, Police Communications will create a 'CAD' field incident and allocate a primary unit.
- b. At the conclusion of a pursuit and in consultation with the relevant team leader, the Pursuit Controller will allocate the finalisation of the PROMIS incident to a member.
- c. The nominated member will complete a PROMIS entry which will include, but is not limited to:
- d. A completed 'Pursuit Driver Debrief report':
- e. Where sufficient detail is included in that report the relevant PROMIS case write off may be completed by inserting 'refer to Pursuit Driver Debrief report' or similar.
 - i. The circumstances of the pursuit
 - ii. The outcome of the pursuit
 - iii. Any damage caused to property as a result of the pursuit.
- f. 'Police Pursuit' will be selected in the PROMIS 'special category' field in addition to the appropriate 'incident type'.
- g. The Pursuit Controller will complete a 'Pursuit Controller Debrief report' at the conclusion of a pursuit and ensure that:
- h. The debrief report is loaded into the case log of the relevant PROMIS incident
- i. Brought to the attention of the Superintendent Police Communications through a PROMIS tasking.

26. Cross border pursuits

- a. Where there is likelihood that a pursuit will cross into New South Wales (NSW) Police Communications will make all reasonable attempts to notify the NSW Police Service and seek permission to continue the pursuit in that State until that State can resume or terminate the pursuit.
- b. At the time of notification the following information will be provided:
 - i. The location and direction of travel of the pursuit

- ii. Speed of suspect vehicle
- iii. Prevailing speed limit
- iv. A description of the vehicle being pursued
- v. Driver's Special Constable status within NSW
- vi. Driver's police experience, rank, driving qualification and duty type, for example General Duties or Traffic Patrol
- vii. The classification of the police vehicle involved in the pursuit
- viii. The reason for the pursuit.
- c. If permission cannot be obtained or permission to continue the pursuit is declined such pursuit will be terminated prior to entering NSW, or in any case immediately on receipt of notification to terminate.
- d. Where permission for a pursuit is given to continue into NSW, control of the pursuit will transfer to the NSW Police Service at the moment the first pursuing police vehicle enters NSW. An appropriate radio channel will be determined by the AFP Pursuit Controller.
- e. Where a pursuit continues into NSW no more than two AFP vehicles will continue the pursuit. When a suitable NSW Police vehicle joins the pursuit it will take primary vehicle responsibility and one AFP vehicle will remain as a secondary vehicle. When a second or subsequent NSW Police vehicle joins the pursuit, AFP members will terminate all pursuit response.
- f. The provisions of this section will similarly apply when NSW Police vehicles cross into the Australian Capital Territory for the purposes of pursuit.
- g. NSW Police vehicles engaged in a pursuit into the ACT are expected to comply with the provisions of this National Guideline.
- h. The Pursuit Controller will report any cross border pursuit driving to the Superintendent, Police Communications or in their absence, the On Call Duty Superintendent as soon as practicable.
- i. Members involved in pursuit driving will comply with both their home jurisdictions pursuit driving policy and that of the jurisdiction being entered. Where there is a conflict between those policies the policy of the jurisdiction being entered, and in which the pursuit is taking place, will take precedence.
- j. Where a collision occurs involving any vehicle or person involved in, or as a result of a cross border pursuit, an investigation will be conducted in accordance with jurisdictional requirements.

27. Police Pursuit Review Committee

- a. The Police Pursuit Review Committee (PPRC) is responsible for:
 - i. The review of all police pursuit driving incidents
 - ii. Identifying any problems or patterns developing in AFP driver behaviour so appropriate strategies may be put in place
 - iii. Identifying any training requirements
 - iv. Recommending cancellation or suspension of a member's driving authority where driver development or assessment is required, regardless if any other action has been instituted
 - v. Recommending amendments to the AFP National Guideline: ACT Policing: Urgent Duty Driving and Pursuit Guideline.
- b. The PPRC will meet at least quarterly to analyse all police pursuits over the previous reporting period. Where a major incident (involving injuries or major property damage) has occurred, a meeting will be convened as soon as practicable to enable formal consideration of the matter. The Committee members should include a representative from Learning and Development and AFP Psychological and Welfare Services at their quarterly and major incident review meetings.

- c. A written report will be provided to the Deputy Chief Police Officer - Response each quarter regarding trends, training issues, welfare or personnel management matters; following any major incident involving a police pursuit; and, at any other time that the PPRC considers it necessary to report on a particular police pursuit incident review.

28. Further advice

- a. Any queries relevant to the content of this guideline would be referred to ACT Policing Policy, Performance and Planning.

29. References

Legislation

- [Australian Federal Police Act 1979](#)
- [Australian Road Rules](#)
- [Crimes Act 1900](#)
- [Road Transport \(Safety and Traffic Management\) Act 1999](#)

AFP Commissioner's Order

- Australian Federal Police Commissioner's Order on Professional Standards (CO2)

National Guidelines

- AFP National Guideline on the Use of Prohibited Drugs - Attachment 'C'
- AFP National Guideline on Traffic Infringement Notices in the Australian Capital Territory to On Duty Members of the Australian Federal Police

Practical Guides

- ACT Policing: Practical Guide: Deaths
- ACT Policing: Practical Guide: Management of Major Incidents - Police Involvement where Death or Serious Injury Occurs
- [ACT Policing: Practical Guide: Notification Requirements On Call Duty Superintendent and On Call Duty Commander](#)
- ACT Policing: Practical Guide: Persons in Custody
- ACT Policing: Practical Guide: Use of Tyre Deflation Devices
- ACT Policing: Practical Guide: Vehicle Collisions Reports and Investigation

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